TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 205.

JOSEPH JACKSON AND JOHN C. TERHUNE, APPELLANTS,

vs.

FREDERICK H. LAWRENCE, MARY L. LAWRENCE, EDWARD A. TALLMAN, HENRY TALLMAN, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED MARCH 19, 1883.

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1 UNITED STATES OF AMERICA, *sct:*

Pleas and proceedings had before the circuit court of the United States for the western division of the western district of Missouri. in a case wherein Joseph Jackson and John C. Terhune are plaintiffs and Alvan N. Lancaster *et al.* are defendants. In equity.

Be it remembered that heretofore, to wit, on the 12th day of May, 1882, and in vacation of said court, the following transcript was filed, to wit:

STATE OF MISSOURI, *County of Worth:*

In the Circuit Court of Worth County, Missouri.

JOSEPH JACKSON & JOHN C. TERHUNE, Plaintiffs,
vs.
ALVAN N. LANCASTER *et al.*, Defendants.

Be it remembered that in the vacation of said court, to wit, on the 31st day of January, 1882, plaintiffs filed with the clerk of the circuit court of said county their petition in words and figures as follows, to wit:

In the Worth Circuit Court. April Term, 1882.

JOSEPH JACKSON & JOHN C. TERHUNE, Plaintiffs,
vs.
ALVAN N. LANCASTER, EDWARD WELLS, FREDERICK H. LAWRENCE, Executors of Last Will and Testament of George C. Tallman, dec'd; Julia Tallman, widow of said George C. Tallman, dec'd; Edward A. Tallman, Henry Tallman, Julia P. Tallman, Eliza S. Lachmeyer, and — Lachmeyer, her husband; Mary L. Lawrence,
2 and Frederick H. Lawrence, her husband; and Rebecca W. Boardman and — Boardman, her husband.

Plaintiffs state that the above-named George C. Tallman, on the 5th day of May, 1880, departed this life testate, leaving surviving him the above-named defendants, to wit, Julia Tallman as his widow, the said Edward A. Tallman, Henry Tallman, Julia P. Tallman, and Eliza S. Lachemeyer, who intermarried with — Lachemeyer; Mary L. Lawrence, who intermarried with Frederick H. Lawrence; and Rebecca W. Boardman, who intermarried with — Boardman, as his only surviving heirs-at-law; that on the 24th day of May, 1880, the will of the said George C. Tallman was duly probated before the surrogate for the county of Kings and State of New York, the court having jurisdiction of the probate of last wills and testaments in said State, and that on said last-named day letters testamentary were duly issued by said surrogate court to the defendant, Frederick H. Lawrence.

Plaintiffs state that in and by said will the said George C. Tallman willed and devised all his property, real and personal and mixed, of every kind and description to the said Frederick H. Lawrence, in trust with the provision that the whole income of said estate should

be paid to his widow, the said Julia Tallman, during her natural life, with remainder to his children and heirs hereinbefore named and made defendants herein in equal parts.

Plaintiffs state that at the time of the accruing of the cause of action hereinafter mentioned plaintiffs herein were copartners with one Hart C. Fisher, in the business of banking, under the firm name of Fisher, Jackson & Co., and that afterwards, to wit, on the first day of September, 1877, the plaintiffs herein purchased of said Hart C. Fisher all his interest in said firm of Fisher, Jackson & Co., its business and property of every kind and description, including
3 the property hereinafter mentioned, and that plaintiffs ever since said last-named date and still were copartners in said banking business under the firm name of "Farmers' Bank," Maryville, Mo.

Plaintiffs, for cause of action, state that on the 9th day of August, 1875, the said Alvin N. Lancaster and one E. P. Sampson were indebted to said firm of Fisher, Jackson & Co., by promissory note, in the sum of $1,000, and that on said 5th day of August, 1875, the said Lancaster was the owner and seized in fee of the following-described real estate, to wit, the northwest quarter of section number seventeen (17), township No. 66, range No. 32; the northeast quarter and the east half of the northwest quarter of section No. 15, township No. 66, range No. 33, in Worth county, Mo.; the east half of the southeast quarter, the southwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section No. 12, township 65, range No. 38, in Nodaway county, Mo.; and the west half of the northeast quarter and the northeast quarter of the northeast quarter of section No. 34, township No. 66, range No. 39, in Atchison county, Mo., which was all the property then owned by the said Lancaster, and that at said time the said E. P. Sampson was, and still is, totally insolvent. Plaintiffs further state that afterwards, to wit, on the 15th day of January, 1876, they, together with said H. C. Fisher, instituted suit in the Worth county circuit court against said Lancaster by attachment, and cause the land hereinbefore mentioned to be attached in said action as the property of the said Lancaster, who was then a non-resident of this State; that afterwards, to wit, on the 24th day of October, 1876, plaintiffs obtained judgment against said Lancaster in said
4 Worth circuit court in the sum of $896.16⅔; that afterwards, to wit, on the 26th day of February, 1878, plaintiffs sued out of said circuit court of Worth county execution on their said judgment, directed to the sheriffs of the said counties of Atchison, Nodaway, and Worth, commanding the sheriffs respectively to levy said executions on the lands in their respective counties, and to sell the same or enough thereof to satisfy said judgment; that afterwards, to wit, on the 31st day of May, 1878, and during the session of the circuit court in and for the county of Atchison, the sheriff of said county of Atchison, in obedience to said writ of execution, at public sale sold the land situate in said county of Atchison hereinbefore described to these plaintiffs, they being the highest bidders therefor, and executed to plaintiffs a deed in due form conveying

said lands to them; that on the 22nd day of April, 1878, and during the session of the circuit court in and for the said county of Worth, the sheriff of said county of Worth, in obedience to the said execution so issued and directed to him, sold the said real estate situate in said Worth county to plaintiff- at public sale, they being the highest bidders therefor, and executed a deed conveying said real estate to them in due form; and that afterwards on the 20th day of March, 1878, during the session of the circuit court in and for the county of Nodaway, the sheriff of said county of Nodaway, in obedience to said execution so directed to him, sold the said real estate situate in said county of Nodaway to plaintiffs, they being the highest bidders therefor, and executed to them a deed in due form conveying to them the lands last aforesaid; that the deeds so made by the said sheriffs of said counties of Atchison, Nodaway, and Worth conveyed the title to all the lands hereinbefore described to plaintiffs subject to the incumbrance hereinafter mentioned.

5 Plaintiffs further state, on the 16th day of September, 1875, the defendant, Edward Wells, loaned to said defendant, Lancaster, the sum of $1,300 on ninety days' time, for which said sum the said Lancaster executed to said Wells his promissory note in ordinary form, by which he promised to pay to said Wells or order the said sum of $1,300, with interest at the rate of ten per cent. after the maturity thereof, and in order to secure said note to said Wells the said Lancaster executed to him, said Wells, a deed of all the lands hereinbefore described, which deed was absolute in form, but by agreement between said Wells and Lancaster the said Wells was to reconvey said land to said Lancaster upon payment of said note, which transaction, so entered into between the said Lancaster and said Wells, plaintiffs aver, constituted said deed last aforesaid a mortgage, and subject to all the incidents of a technical mortgage.

Plaintiffs state that afterwards, to wit, on the 20th day of January, 1876, and after the said land had been attached at the suit of plaintiffs against the said Lancaster, as aforesaid, the said Lancaster having failed to pay said note to said Wells, and redeem said land according to the said agreement and the tenor of said note, the said Wells, on the said last-mentioned day, sold, assigned, and transferred all his right and claim to said land, as mortgagee aforesaid, to the said George C. Tallman by deeds of quit-claim, the said Tallman at the time having notice of the claim of plaintiffs aforesaid, and that the interest of said Wells in said land was that of mortgagee only.

6 Plaintiffs further state that on the 15th day of January, 1876, together with the said Hart C. Fisher, as coplaintiff, with them, they instituted suit in said Worth circuit court against the said Lancaster, Wells, and Tallman, the said Tallman then *living*, for the purpose of obtain- a judgment and decree of said circuit court, declar*ing* the said deed of the said Lancaster to said Wells to secure the said note as aforesaid a mortgage, and for the right to redeem the said land from said Tallman as creditors of said Lancaster and in his place and stead, in which said last-mentioned suit, instituted by plaintiffs as aforesaid against the said Lan-

caster, Wells, and said Tallman, afterwards, to wit, on the 26th day of October, 1877, plaintiffs obtained a judgment and decree in said circuit court declaring the said deed so made by said Lancaster to Wells as a mortgage, and also that plaintiffs be permitted to redeem said land from said Tallman by paying to him, said Tallman, the amount due him, which was ascertained by an accounting to be the sum of $1,842.61, from which said judgment and decree so rendered by said circuit court the said Tallman appealed to the supreme court of this State, in which said last-named court, afterwards, to wit, on the — day of December, 1881, the said judgment and decree so appealed from by said Tallman was reversed, on the ground that said last-named suit so brought against said Lancaster, Wells, & Tallman was prematurely instituted by plaintiffs in said circuit court, and because plaintiffs should not have instituted their said last-mentioned suit against the said Lancaster, Wells, and Tallman until they had established their said claim against said Lancaster in said attachment suit by a judgment in said circuit court.

Plaintiffs state that the defendants herein are all non-residents of this State, and that they have not been able to ascertain the
7 Christian names of the said Lachemeyer, husband of said defendant, Eliza S. Lachemeyer, and the said Boardman, husband of the said defendant, Rebecca W. Boardman.

Wherefore plaintiffs now tender in court here and offer to pay to the legal representatives of the said George C. Tallman the amount which may be ascertained to be due them and to which they may be entitled as representatives of the said Tallman or assignees of said mortgage, and for all interest thereon and all taxes paid on said lands, and for the purpose of ascertaining the said amount plaintiffs pray that an account be taken thereof, or, that under the evidence produced, that this court find and declare said amount, and the plaintiffs be permitted, as purchasers of all the right, title, and interest, and equity of redemption of said Lancaster in said land, to redeem the same, and for all other and proper relief.

JOHNSTON & ANTHONY,
Att'ys for Pl'ffs.

And afterwards, to wit, on the 21st day of February, 1882, the clerk of said court issued a summons to the defendants, which said summons is in words and figures as follows, to wit:

Summons.

STATE OF MISSOURI, } ss:
County of Worth, }

In the Circuit Court.

The State of Missouri to the sheriff of Worth county, Greeting:

We command you to summon Alvin N. Lancaster, Edward Wells, Frederick H. Lawrence, executors of the last will and testament of Geo. C. Tallman, dec'd; Julia Tallman, Edward A. Tallman, Henry Tallman, Julia P. Tallman, Eliza S. Lachemeyer & — Lache-
8 meyer, her husband; Mary L. Lawrence and Frederick H.

Lawrence, Rebecca W. Boardman, and — Boardman, her husband, if they be found in your county, to appear before our circuit court, to be holden within and for the county of Worth, at the court-house in the town of Grant City, in said county, on the first day of the next term thereof, to be begun and held on the fourth Monday in April next, A. D. 1882, then and there before the judge of our said court to answer the petition of Joseph Jackson and John C. Terhune, (a certified copy of which petition is hereunto annexed). And have you then and there this writ, with the return of your action thereupon.

Witness my hand as clerk of our said court, and the seal thereof. Done at office in Grant City, in the county aforesaid, on the 21st day of Feb'y, A. D. 1882.

[SEAL.] W. H. CAMPBELL, *Clerk.*

Be it remembered that at a regular term of the circuit court of Worth county, Missouri, began and held at Grant City, Mo., on Monday, the 24th day of April, 1882, there were present the following officers, Hon. John C. Howell, judge; W. H. Campbell, clerk; A. D. Austin, prosecuting attorney; and James W. Roberts, sheriff, and on the first day of said term of said court, it being the 24th day of April, A. D. 1882, among other proceedings had and done, were the following, to wit:

JOSEPH JACKSON & JOHN C. TERHUNE *vs.* ALVIN N. LANCASTER *et al.*

Now comes B. F. Lucas, attorney for defendants, and files petition to remove this cause from the circuit court of Worth county, Missouri, to the circuit court of the United States for the west-
9 ern district of Missouri, on the ground of citizenship, which said petition is in words and figures as follows, to wit:

Petition for Removal to the Circuit Court of the United States, District of ——.

In the Circuit Court of Worth County, State of Missouri.

JOSEPH JACKSON and JOHN C. TERHUNE, Plaintiffs,

vs.

ALVIN N. LANCASTER, EDWARD WELLS, FREDERICK H. LAWRENCE, Executors of the Last Will of George C. Tallman, Dec'd; Julia Tallman, Widow of said George C. Tallman, Dec'd, and others, Devisees under the Last Will of said George C. Tallman, Deceased, Defendants.

Petition for removal on the ground of citizenship, under the act of March 3rd, 1875, where the adversary parties are all citizens of different States, and all the plaintiffs or all the defendants unite in the petition for removal.

To the honorable the circuit court of Worth county, State of Missouri:

Your petitioners respectfully show to this honorable court that

the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioners, at the time of the commencement of this suit, were and still are citizens of the State of New York, and that plaintiffs, Joseph Jackson and John C. Terhune, then and still are citizens of the State of Missouri. That the defendants, Alvin N. Lancaster and Edward Wells, then were and still are citizens of the State of Illinois, but that all the other defendants who are your petitioners herein, to wit, Frederick H. Lawrence, executor of the last will and testament of George C. Tallman, deceased; Julia Tallman, widow of the said George C. Tallman, deceased; Edward A. Tallman, Henry Tallman, Julia P. Tallman, Eliza S. Lachemeyer and —— Lachemeyer, her husband; Mary L. Lawrence and Frederick H. Lawrence, her husband; and Rebecca Boardman and —— Boardman, her husband, heirs and legatees of the said George C. Tallman, deceased, are all citizens of the State of New York and are residents therein.

And your petitioners offer herewith a good and sufficient surety for their entering in said circuit court of the United States on the first day of its next session a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And they pray this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for the western district of Missouri; and they will ever pray.

B. F. LUCAS,
Attorney for Petitioners.

STATE OF ———, }
County of ———, } *ss:*

I, Frederick H. Lawrence, being duly sworn, do say: That I am one of the defendants and petitioners in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

FRED'K H. LAWRENCE.

Subscribed by the said Frederick H. Lawrence in my presence, by and by him sworn to before me, this 13th day of April, A. D. 1882.

WM. DE L. BOUGHTON,
Notary Public, City and Co. of N. Y.

And, to wit, on the same day, among other proceedings had and done were the following, to wit:

Bond.

JOSEPH JACKSON & JOHN C. TERHUNE *vs.* ALVIN N. LANCASTER *et al.*

Bond for removal of a cause under the act of March 3rd, 1875.

Now comes B. F. Lucas, attorney for defendants, and files bond for removal of this cause from the circuit court of Worth county, Mo., to the circuit court of the United States for the western district of Missouri, which said bond is in words and figures as follows, to wit:

Know all men by these presents that we, Frederick H. Lawrence, as principal, and Wm. E. Wilson, as sure*ties*, are held and
12 firmly bound unto Joseph Jackson and John C. Terhune in the penal sum of five hundred dollars, for the payment whereof, well and truly to be made, unto the said Jackson & Terhune, their heirs, representatives, and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, by these presents. Yet, upon these conditions, the said Frederick H. Lawrence and others, his codefendants, having petitioned the circuit court of Worth county, State of Missouri, for the removal of a certain cause therein pending, wherein Joseph Jackson and John C. Terhune are plaintiffs and Frederick H. Lawrence and others are defendants, to the circuit court of the United States in and for the western district of Missouri:

Now, if the said Frederick H. Lawrence and his codefendants, your petitioners, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise, in full force and virtue.

Witness our hands and seals, this 13th day of April, A. D. 1882.

[SEAL.] FREDERICK H. LAWRENCE,
As Principal.

[SEAL.] WM. C. WILSON, *Security.*

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, Wm. C. Wilson, of said county, the surety named in the
13 foregoing bond, being duly sworn, do depose and say: That I am a resident of the State of Missouri and a property holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Missouri liable to execution of the value of more than five hundred dollars.

Subscribed in my presence by Wm. C. Wilson and by him sworn to, before me, this 18th day of April, A. D. 1882, and my commission as notary public expires 26th of June, 1885.

[SEAL.] PHILIP S. LANHAM,
Notary Public for City of St. Louis, Missouri.

And afterwards, to wit, on the fourth day of said term of said court, being the 27th day of April, A. D. 1882, among other proceedings had and done on said day were the following, to wit:

JOSEPH JACKSON *et al. vs.* ALVIN N. LANCASTER *et al.*

Now come the *come the* plaintiffs, by their attorney, and also come the defendants, by their attorney, and by agreement of the parties it is ordered by the court that the depositions taken by both parties, plaintiffs and defendants, in the case of Fisher, Jackson & Co. against A. N. Lancaster *et al.*, decided by this court at the October term, 1877, be filed in this cause, to wit: The depositions of A. N. Lancaster, Edward L. Wells, & Edward P. Sampson, Dr. Thomas Jordan, taken on behalf of the plaintiffs, and the depositions of Geo. C. Tallman & Thomas Jordan, taken on the behalf of the defendants. And it is further ordered that the said depositions, by
14 agreement of the parties, be transmitted to the circuit court of the United States for the western district of Missouri.

And, to wit, on the same day, among other proceedings had and done were the following, to wit:

JOSEPH JACKSON *et al. vs.* ALVIN N. LANCASTER *et al.*

And now at this time come the plaintiffs and the defendants, Frederick H. Lawrence, executor of the last will and testament of Geo. C. Tallman, dec'd; Julia Tallman (widow of said Geo. C. Tallman, dec'd), Edward A. Tallman, Henry Tallman, Julia P. Tallman, Eliza S. Lachemeyer & — Lachemeyer, her husband; Mary L. Lawrence; and Frederick H. Lawrence, her husband, and Rebecca W. Boardman and — Boardman, her husband, by their respective attorneys; and the petition of the said defendants, file- at this term, for the removal of the said cause from this court to the circuit court of the United States for the western district of Missouri, being taken up, and the facts stated in said petition appearing to be true, and the sum in controversy exceeding the sum of five hundred dollars, it is ordered by the court here that this cause be removed for trial into the circuit court of the United States for the western district of Missouri, the said defendants having filed the bond required by the act of Congress in such case made and provided, which bond is hereby approved. And it is further ordered that the clerk of this court furnish to the petitioners or their attorney of record a transcript in this cause, together with the original depositions this day ordered to be filed herein.

15 STATE OF MISSOURI, }
County of Worth, } *ss:*

I, W. H. Campbell, clerk of the circuit court within and for the county of Worth and State of Missouri, certify that the above and foregoing is a full and complete transcript of the records and proceedings in the case wherein Joseph Jackson and John C. Terhune are plaintiffs, and Alvin N. Lancaster *et al.* are defendants, as ap-

pears by the records of said court in my office, including the original depositions and order for transmitting same.

In witness whereof I have hereunto set my hand and affixed my official seal, at office at Grant City, this 10th day of May, A. D. 1882.

[SEAL.] W. H. CAMPBELL,
Worth Circuit Clerk.

And afterwards, to wit, at the May term of said court and on the 16th day of May, A. D. 1882, the following entry appears of record, to wit:

JOSEPH JACKSON *et al.*
against } 500.
ALVIN N. LANCASTER *et al.*

This day come defendants, by their solicitor, and file exceptions to complainants' bill.

Which said exceptions are in words and figures as follows, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri. At May Term, 1882. No. ——.

16 JOSEPH JACKSON and JOHN C. TERHUNE
vs.
FREDERICK H. LAWRENCE, Executor of the last will and testament of George C. Tallman, deceased, *et al.*

And the said defendants, Frederick H. Lawrence, Julia Tallman, Edward A. Tallman, Henry Tallman, Julia P. Tallman, Eliza S. Lachemeyer and — Lachemeyer, her husband; Mary L. Lawrence, Rebecca W. Boardman and — Boardman, her husband, come and except to all that part of plaintiffs' petition commencing with the words, "Plaintiffs further state that on the 15th day of January, 1876, together with the said Hart C. Fisher, as coplaintiff with them, they instituted suit in said Worth circuit court against the said Lancaster, Wells, and Tallman, then living," of page nine of said petition, and ending with the words, "until they had established their said claim against said Lancaster in said attachment suit by a judgment in said circuit court," on page ten, and move the court to strike the same from the said petition for the following reasons:

1st. That the said portion of said petition excepted to is impertinent.

2nd. That plaintiffs attempt in said portion of said petition to set out the law which they suppose to be applicable to the case.

B. F. LUCAS,
Att'y for Def'ts.

17 And afterwards, to wit, at said May term of said court, and on the 18th day of May, 1882, the following entry appears of record, to wit:

JOSEPH JACKSON *et al.*
vs. } 500.
ALVIN N. LANCASTER.

This day come the parties, by their solicitors, and thereupon the

exceptions to the bill are argued and submitted to the court, and upon consideration of the premises the court doth order that the same be overruled.

And on the same day, to wit, the 18th day of May, 1882, the following answer was filed, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri. At May Term, 1882.

JOSEPH JACKSON and JOHN C. TERHUNE
vs.
ALVIN N. LANCASTER, EDWARD WELLS, FREDERICK H. Lawrence, executor of the last will and testament of George C. Tallman, deceased; Julia Tallman, widow of said George C. Tallman, deceased; Edward A. Tallman, Henry Tallman; Julia P. Tallman; Eliza S. Lachemeyer and —— Lachemeyer, her husband; Mary L. Lawrence & Frederick H. Lawrence, her husband; Rebecca Boardman and —— Boardman, her husband. } No. 500.

The joint and several answer of Frederick H. Lawrence
18 and Mary L. Lawrence, his wife; Julia Tallman, Edward A. Tallman, Henry Tallman, Julia P. Tallman; Eliza S. Lachemeyer and —— Lachemeyer, her husband; and Rebecca Boardman and —— Boardman, her husband, to the bill of complaint filed by the plaintiffs herein.

These defendants, protesting against the manifold errors, uncertainties, omissions, and other imperfections in plaintiffs' bill of complaint contained, for answer thereto, or so much thereof as they are advised that it is necessary or material for them to make answer unto, answering, say:

That it is true that the said George C. Tallman departed this life on the fifth day of May, eighteen hundred and eighty, having first made his last will and testament, wherein and whereby he constituted and appointed the defendant, Frederick H. Lawrence, to be the executor thereof, and that the said defendants, Julia Tallman, Edward A. Tallman, Henry Tallman, Julia P. Tallman, Eliza S. Lachemeyer, Mary L. Lawrence, and Rebecca Boardman, his heirs-at-law and devisees. It is also true that on the twenty-fourth day of May, eighteen hundred and eighty, the said last will and testament of the said George C. Tallman was duly proved in manner and form stated by the plaintiffs in their said bill of complaint, and that letters testamentary were duly granted to the defendant, Frederick H. Lawrence, who assumed and took upon himself the office and duties of executor of the said last will and testament.

It is also true that the said George C. Tallman, in and by his last said will and testament, gave and devised all his property, real, personal, and mixed, to the defendant, Frederick H. Lawrence, in trust with the provisions stated in the said bill of complaint.

19 And these defendants say that they have no knowledge or information sufficient to form a belief as to whether at the

time in said bill of complaint stated the said plaintiffs were copartners with one Hart C. Fisher in the business of banking under the firm name of Fisher, Jackson & Co., or whether at any time thereafter these plaintiffs purchased the interest of the said Hart C. Fisher in said firm of Fisher, Jackson & Co., its business and property, or whether, if such purchase was made, it included the property in the said bill of complaint mentioned, or whether the said plaintiffs since the said alleged purchase from the said Hart C. Fsher have been and still are copartners in said banking business in the firm name of "Farmers' Bank," Maryville, Mo.

And these defendants say that they have no knowledge or information sufficient to form a belief as to whether on the ninth day of August, eighteen hundred and seventy-five, or at any other time either before or after that date, the said Alvin N. Lancaster and one E. P. Sampson were indebted to the firm of Fisher, Jackson & Co. in the sum of $1,000 or any other sum by promissory note or otherwise. And these defendants admit that on the fifth day of August, eighteen hundred and seventy-five, the said Alvin N. Lancaster was the owner and was seized in fee of the several tracts of land in plaintiffs' said bill of complaint described, situate in the said counties of Worth, Nodaway, and Atchison, in the State of Missouri. But these defendants deny that the said tracts of land in the said plaintiffs' bill of complaint described all the property then owned by the said Alvin N. Lancaster, but upon the contrary thereof these defendants say that they are informed and believe that at the time aforesaid and for a considerable time thereafter the said Lancaster owned and was possessed of a large amount of real estate and personal property; and as to whether at the time aforeaforsaid the said E. P. Sampson was or still is totally or in any manner insolvent, these defendants have no knowledge or information sufficient to form a belief.

And these defendants further say that whether or not on the 15th day of January, 1876, or at any other time, the said plaintiffs, together with the said Hart C. Fisher, instituted suit in the circuit court of Worth county against the said Alvin N. Lancaster by attachment, or whether they caused the lands in the said bill of complaint of plaintiffs described to be attached in said action as the property of the said Lancaster, or whether on the 24th day of October, 1876, plaintiffs obtained judgment against the said Lancaster in the said Worth circuit court in the sum of $896.16⅔, or whether, on the 26th day of February, 1878, or at any other time, the plaintiffs sued out of said circuit court of Worth county executions on their said judgment to the sheriffs of Atchison, Nodaway, and Worth counties, or either of them, to levy said executions on the said lands situate in their respective counties, or to sell the same to satisfy said judgment, or whether the said sheriffs of the said counties of Atchison, Nodaway, and Worth, or either of them, sold the said lands in the said plaintiffs' bill of complaint described, or any part thereof, and executed any deed or deeds therefor to the plaintiffs, these defendants have no knowledge or information sufficient to enable them to form a belief. But these defendants deny that the

deeds made by the said sheriffs of Atchison, Nodaway, and Worth counties to the said plaintiffs, if any such deeds were made,
21 conveyed the title or any title to the lands in the plaintiffs' bill of complaint described to the said plaintiffs, subject to the incumbrances in said plaintiffs' bill of complaint mentioned, or in any other manner whatever.

And defendants further say that whether or not on the 16th day of September, 1875, the defendant Edward Wells loaned to the defendant Alvin N. Lancaster the sum of thirteen hundred dollars or any other sum, for which the said Lancaster gave to the said Wells his promissory note payable in ninety days, with interest thereon at the rate of ten per cent. after the maturity thereof, or whether or not the said Lancaster executed a deed to the said Wells for the said lands in plaintiffs' bill of complaint described under any agreement that upon the payment of the said note, or any note, by the said Lancaster to the said Wells, he, the said Wells, was to reconvey the said lands to the said Lancaster, these defendants have no knowledge or information sufficient to form a belief, and they deny that the agreement or any agreement between the said A. N. Lancaster and Edward Wells constituted the deed executed by the said Lancaster to the said Wells, as hereinafter stated, a mortgage, or subjected it to all or any of the incidents of a technical mortgage.

And these defendants deny that on the 20th day of January, 1876, and after the said land had been attached at the suit of plaintiffs against the said Lancaster, the said Wells sold, assigned, and transferred all his right and claim to said lands as mortgagee to the said George C. Tallman, or that the said Tallman had notice at the time of the claim of the plaintiffs of that the interest of the said Wells in the said lands was that of a mortgagee only.

22 But these defendants aver the facts to be that on the fifteenth day of September, eighteen hundred and seventy-five, the said Alvin N. Lancaster sold and conveyed the several tracts of land in the plaintiffs' bill of complaint described to the said Edward Wells by a deed absolute upon its face, with covenant of general warranty, which said deed was duly recorded in the several counties in which the said lands were situated; that during the latter part of the month of December the said Edward Wells, by his agent, Dr. Jordan, of the city of Chicago, entered into negotiations with the said George C. Tallman for the sale of the said lands by the said Wells to the said Tallman; that said negotiations were so carried on and continued until the fifth day of January, eighteen hundred and seventy-six, when said negotiations were concluded and ended by the said Tallman purchasing the said lands from the said Wells, and the said Wells executing and delivering to the said George C. Tallman deeds absolute for the same lands, which said deeds were duly recorded in the several counties in which the said lands were situate, and the said lands make up a part of the estate devised by the said George C. Tallman to the defendant, Frederick H. Lawrence.

And these defendants further aver that at the time when the negotiations were going on between the said Edward Wells and the said George C. Tallman for the sale and purchase of the said lands,

and at the time the said sale was consummated by the execution and delivery of the deeds therefor as aforesaid, the said George C. Tallman had no knowledge whatever of any claim of the plaintiffs against the said Lancaster, or that the title of the said Wells was anything other or different from the absolute title shown by
23 the deed from Lancaster to Wells, as recorded; that the said George C. Tallman intended to purchase, and did purchase, the absolute title to the said lands, for which he paid a valuable and what — the time of the said purchase was full and fair consideration for the same.

And these defendants, having fully answered, pray to be hence dismissed, with their reasonable costs in that behalf most wrongfully incurred.

B. F. LUCAS,
Solicitor for Defendants above named.

And afterwards, to wit, at a regular term of said court, and on the 26th day of May, A. D. 1882, the following entry appears of record, to wit:

JOSEPH JACKSON *et al.*
against } 500.
ALVIN N. LANCASTER *et al.*

This day come complainants, by their solicitor, and files application for order of service on defendants, Lancaster and Wells.

Which said application is in words and figures as follows, to wit:

Petition of Complainants for an Order directing Defendants Alvin N. Lancaster and Edward Wells to appear and plead, answer, or demur herein.

In the Circuit Court of the United States for the Western Division of the Western District of the State of Missouri.

JOSEPH JACKSON and JOHN C. TERHUNE, Plaintiffs,
vs.
ALVIN N. LANCASTER, EDWARD WELLS, FREDERICK H. LAWRENCE, Executor of the last Will and Testament of George C. Tall-
24 man, deceased; Julia Tallman, widow of said George C. Tallman, deceased; Edward A. Tallman, Henry Tallman, Julia P. Tallman, Eliza S. Lachemeyer and — Lachemeyer, her husband; Mary L. Lawrence and Frederick H. Lawrence, her husband; and Rebecca W. Boardman and — Boardman, her husband, Defendants.

Come now the said complainants herein and state to the court that two of the said defendants, to wit, Alvin N. Lancaster and Edward Wells, have not been served by summons, nor have they been notified herein by publication, nor have they appeared in this suit; that the above-entitled cause is a suit in equity to enforce an equitable claim against real property within the jurisdiction of this court; that said named defendants are non-residents of the State of Mis-

souri. Wherefore said complainants pray the court for an order directing the said two defendants to appear, plead, answer, or demur herein at some certain day to be designated in such order.

JOHNSTON & ANTHONY, AND
H. M. JACKSON,
Attorneys for Complainants.

H. M. JACKSON,
For Complainants.

And afterwards at said term and on June 2d, 1882, the following reply was filed, to wit:

25 *Reply to the Answer of Frederick H. Lawrence, Executor, &c.; Julia Tallman, widow, &c.; Edward A. Tallman, Henry Tallman, Julia P. Tallman, Eliza S. Lachemeyer and Lachemeyer, her husband; Mary L. Lawrence and Frederick Lawrence, her husband; Rebecca Boardman and — Boardman, her husband.*

In the Circuit Court of the United States for the Western Division of the Western District of the State of Missouri.

JOSEPH JACKSON and JOHN C. TERHUNE, Plaintiffs,
against
ALVIN N. LANCASTER, EDWARD WELLS, FREDERICK H. LAWRENCE, Executor of the last Will and Testament of George C. Tallman, deceased; Julia Tallman, *et al.*

Now comes the said plaintiffs, and for reply to the said above-mentioned answer of the defendants above named, deny each and every statement, averment, or allegation of new matter therein contained, and by them relied upon as a defence to the plaintiffs' petition herein, and said plaintiffs hereby join issue with the said defendants.

JOHNSTON & ANTHONY,
H. M. JACKSON,
Att'ys for Plaintiffs.

And afterwards, to wit, at said term of said court, and on the 7th day of June, 1882, the following entry appears of record, to wit:

26 JOSEPH JACKSON *et al.* } 500.
against
ALVIN N. LANCASTER *et al.* }

Upon reading and filing the application of complainant for an order of service against defendants, Alvin N. Lancaster and Edwin Wells, it is ordered by the court, upon consideration of the premises, that said defendants, Alvin N. Lancaster, appear, plead, answer, or demur to the bill of complaint herein on or before the rule day in August next, and in default thereof the court will proceed to the hearing and determination of the above cause as though *they had* the above-named defendant had been regularly served with process of subpœna.

And afterwards, to wit, on a day of the regular October term of

said court, to wit, the ninth day of November, A. D. 1882, the following further proceedings were entered of record, to wit:

JOSEPH JACKSON *et al.*
against
ALVIN N. LANCASTER *et al.* } 500.

This day come the complainants, by their solicitor, and, by leave of the court, dismiss their bill as to defendants Lancaster and Wells; whereupon it is ordered that said defendants go hence, without day, and recover their costs.

Thereupon this cause is called for hearing as to the remaining defendants, and a stipulation in regard to proofs is filed. Further hearing postponed till a future day.

And the said stipulation is in words and figures as follows, to wit:

27 In the United States Circuit Court.

JOSEPH JACKSON *et al. vs.* A. N. LANCASTER *et al.*

KANSAS CITY, MO.

For the purposes of this case only the following facts are admitted in above-entitled cause and proof of same waived, to wit:

1. That prior to Sept. 1st, 1877, Hart C. Fisher, Joseph Jackson, and John C. Terhune were copartners in the business of banking at Maryville, Mo., and that on said day the said Jackson and Terhune purchased all the interest of said Fisher in said copartnership and business, including the land in the above-entitled cause; and that said banking business is carried on under the firm name of "Farmers' Bank of Maryville, Mo."

2. That on Aug. 9th, 1875, defendant, Lancaster, and one E. P. Sampson was indebted to said firm of Fisher, Jackson & Co. in the sum of $1,000, for which they gave said firm of Fisher, Jackson & Co. their promissory note.

3. That Fisher, Jackson & Co. instituted suit by attachment on the 15th day of January, 1876, in the Worth circuit court, against said defendant, Lancaster, in which the land in controversy was attached as the property of said Lancaster; and that at said last-named date said Lancaster was a non-resident of this State.

4. That on the 24th day of October, 1876, said Fisher, Jackson & Co. obtained judgment against said Lancaster, in said attachment suit, in the sum of $895.16⅔ in said Worth circuit court.

28 5. That on Feb'y 21st, '78, executions were sued out by said plaintiffs on said judgment, directed to the sheriffs of Atchison, Nodaway, and Worth counties, respectively, special in form, commanding said sheriffs to sell the lands in their respective counties which had been attached; and that said sheriffs did sell the lands in their respective counties in regular manner, and said lands were purchased by plaintiffs and received sheriffs' deeds in due form.

And which we agree may be read on the trial of the above-entitled

cause, hereby dispensing with more formal proof thereof, but it is not admitted that said sales vested any title in plaintiffs.

This Oct. 31st, 1882.

JOHNSTON & JACKSON,
Att'ys for Plaintiffs.

B. F. LUCAS,
For All the Defendants except Lancaster and Wells.

Afterwards, at said term, and on the 10th day of November, aforesaid, the following further proceedings were entered, to wit:

JOSEPH JACKSON *et al.*
against
FREDERICK H. LAWRENCE *et al.* } 500.

This day come the parties, by their solicitors, and file abstracts of testimony.

Which said abstracts of testimony are as follows, to wit:

29 *Plaintiffs' Abstract.*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

JOSEPH JACKSON *et al.*, Plaintiffs,
vs.
ALVIN N. LANCASTER, EDWARD WELLS, FREDERICK H. LAWRENCE, Executor of the Last Will and Testament of George C. Tallman *et al.*, Defendants.

Abstract of Evidence on part of Complainants.

Deposition of Thomas M. Jordan.

I reside in Chicago. I know Lancaster; he conveyed some lands in Atchison, Nodaway, and Worth counties, Missouri, about September, 1875, to Edward Wells.

At the request of Mr. Lancaster I wrote to Mr. Wells to know if he could raise Mr. Lancaster some money and hold these lands as security; that Lancaster wanted some $1,300 to $1,500 for ninety days; that if Wells would raise the money for him he would convey the lands directly to him, and if not redeemed at maturity he might keep the land or sell it. Wells, on receipt of my letter, wrote me that he could raise the money for the time required, and asked me to have the land conveyed and he would send the money. Lancaster executed the deed and I sent it to Wells. About the time the note became due Mr. Wells wrote to me to see Lancaster and urge payment, which I did. Lancaster told me to tell Wells to sell the land, and suggested a Mr. Matteson, of Galesburg, as a probable purchaser. Matteson declined to purchase. Wells wrote to me to urge Lancaster to pay the note, as he could not get a cash offer for the land. About this time I wrote to Geo. C. Tallman, the defendant, in relation to purchasing the land. Tallman, I believe, wrote

30 me he would pay $1,300.00, the amount Lancaster owed Mr. Wells. I wrote to Wells, sending him the deeds prepared from him to Tallman. A few days after this I was in Macomb, Illinois, where Wells resides, and he handed me the deeds executed, together with the Lancaster note, which I brought to Chicago; and shortly afterwards Mr. Tallman came on here and paid me this amount of money and took the deeds.

I think Mr. Lancaster suggested to me that Mr. Tallman might purchase the lands. I don't know how long this suggestion was made by Lancaster before I went to Macomb to see Wells, but I think it was before the note became due. Mr. Lancaster said to me that Mr. Wells should have his money promptly. By reference to my letter-book I find that I remitted the money to Mr. Wells on the 20th day of January, 1876, and the money was paid by Mr. Tallman to me and the deeds delivered to him on the same or a day or two previous. The amount I received from Mr. Tallman was the exact amount of principal and interest due on the Lancaster note to Wells, including recording fees and for examining title, that Wells had paid out.

The note of Lancaster to Wells was mentioned in my interviews with Mr. Tallman. I believe I stated to him that it would not exceed, in round numbers, the sum of $1,400.00. I did not know then the additional expense Wells had been to. I do not know that the note was shown to Tallman, but I had the note in my office, and I think I reckoned the interest and told Mr. Tallman the amount of it. I don't remember that anything was said about the Missouri land being held as security, any further than that Wells had authorized me to deliver the deeds upon payment of the amount of money. I think the specified sum was $1,350.00.

31 Upon cross-examination he testified:

Lancaster was to have ninety days to redeem in and receive a conveyance back.

The reason that I mentioned the note given by Lancaster to Wells to Tallman was because wells wrote to me that he was determined to sell the land if he could not get any more than was coming to him.

Deposition of A. N. Lancaster.

I reside in Hyde Park, Chicago. About the 16th day of September, 1875, I conveyed to my codefendant, Wells, 160 acres in section 17, and 240 acres in section 15, Worth county, Mo.; 160 acres in section 12, Nodaway county, and 120 acres in section 34, Atchison county. I proposed through Dr. Jordan that, if Mr. Wells would furnish me the money I wanted, about $1,300, I would convey the lands to him absolutely, but that he should give me the privilege of paying it in ninety days; otherwise, he might sell it. That was about the substance of it.

At the time I executed the deed to Wells I also executed to him a note, payable in 90 days, for $1,300.00.

Of my own knowledge I do not know what disposition Mr. Wells

made of the lands. I understood that he sold them to George C. Tallman. I wrote Wells concerning it, but he never answered me.

I think Tallman received a deed from Wells at the same time for some Michigan land.

I conveyed the two tracts of land in Iowa to Mr. Wells to secure money borrowed of him, and I conveyed one tract in Missouri to E. P. Sampson to secure him for going my security in a lawsuit. After the suit Mr. Sampson conveyed the land which I conveyed to him to Mr. Tallman and one W. F. Miller.

32 During the month of January, 1876, I think I met Mr. Tallman in Chicago at least fifty times, frequently at Judge Wood's office and at the hotel. Judge Wood was his attorney here in the purchase of the land. I had by my agreement with Wells ninety days to redeem the land in and obtain a reconveyance, and if the money was not paid at that time I was to have no further interest in the land. I did not pay Wells any part of the money within the ninety days. After the ninety days were up I received two offers for the land and sent them to Mr. Wells and Mr. Tallman, but received no answer from either of them. I offered to sell these lands to Tallman at his house personally. I asked him $3,000 for them; that was in November or December, 1875, but he declined to purchase them.

Deposition of Edward L. Wells.

I reside in Macomb, Illinois. I have had business transactions with Lancaster. He conveyed to me the land in controversy. In 1872 I loaned him $500, for which he gave me his note at ten per cent. After it ran about two years he renewed it by adding principal and interest and giving a new note. After the last note became due I wrote to him, urging payment, but I could get no satisfaction out of him; I began corresponding with an attorney about suing on the note, when Dr. Jordan wrote me that if I would let Lancaster have $500 or $600 in addition to what he already owed me that he, Lancaster, would convey me his Missouri lands by an absolute deed as security with the agreement that if he did not pay the note which had 90 days to run that I should have the land and sell it to whom I pleased. I accordingly raised him some more money, which, with his note before mentioned, and interest at 10 per cent.

33 for 90 days added, amounted to just $1,300, for which he gave me his note at 90 days and conveyed the lands in controversy to me to secure the said note, as before stated. I sent the old note and additional money to make up the $1,300 to Dr. Jordan, September 16, 1875, to be delivered to Lancaster, and who returned to me in a few days the $1,300 note and a deed for the land.

I requested Dr. Jordan to find a purchaser for the land, Lancaster not having paid the note at maturity. He told me he had sold the land to Tallman, and requested me to make out deeds; he said he had sold it for the amount of my claim, which was $1,300.00 and interest from the maturity of the note.

I delivered the $1,300.00 note to Dr. Jordan to deliver to Lancaster upon receipt of the amount due from Tallman; I did not

know whether Tallman knew that I held the title to the land as security for the $1,300 note or not; I was to deed the land back to Lancaster if he paid the note at maturity; if he did not pay when due he was not to have the right to redeem, but I was to do with the land what I pleased, and, according to my understanding, he had forfeited the right to redeem it; in selling the land Dr. Jordan acted as my agent.

Deposition of E. P. Sampson.

I reside in Maryville, Mo.; I have known for the last five years of Lancaster and Tallman having business transactions together, Lancaster selling to Tallman notes and mortgages and the latter sending them to me for collection; I had no other agency from him, Tallman; I received instructions about the sale of the lands sold by Wells to Tallman from Lancaster; there was a quarter sec-
34 tion of land in Nodaway county involved in an ejectment suit; Lancaster directed me to employ an attorney in the suit, and that Tallman would pay them; I employed Messrs. Johnston & Jackson to take charge of the matter; Lancaster stated that he had conveyed the land to Tallman; I was agent for the sale of the land now claimed by Tallman up to January 20th, 1876, and was the sole agent of Lancaster for collections in Nodaway and Worth counties, and had frequent correspondence with him from 1872 to January 26, 1876; Lancaster wrote me to effect a compromise in the ejectment suit by dividing the land half and half; about this time I was negotiating with Messrs. Smith and Brown for a sale of the whole 680 acres of the Tallman land; they offered me $2,500.00 cash, but I thought the land worth $3,500; they wanted it as a speculation.

(Copies of the letters in reference to the lands in question are as follows, as attached to Mr. Sampson's deposition read in evidence, to wit:)

EXHIBIT A.

CHICAGO, *January* 17, 1876.

E. P. Sampson, Esq.

DEAR SIR: I am sorry indeed you are having trouble in your business. I hope soon you may come out all right. Mr. Tallman advises me he has bought all those lands from Wells. You know his address. He will no doubt be glad to have you sell them. Close up his collections and sell his land, and he will pay you well. Be prompt, as he is very particular.

Truly, A. N. LANCASTER.

EXHIBIT B.

CHICAGO, *January* 26, 1876.

35 FRIEND SAMPSON: For a time have been moving so fast have not had time to write. If you can sell 160 in 12, in Nodaway county, at $10.00 per acre; also the 80 in 15 at $8.00 to $10.00 per

acre, section 17 at $8.00, 34 at $16.00, on, say, one-fourth cash, Mr. Tallman will pay your commission. If you can compromise the suit on section 36 by dividing equally he will be satisfied with it.

Yours, in haste, A. N. LANCASTER.

Deposition of George C. Tallman.

I reside in Brooklyn, N. Y. In negotiating with Dr. Jordan for these lands Mr. Lancaster was not referred to in any way, and I did not learn that he ever had any interest in the lands until after the purchase was completed. I learned it from what I saw in the abstract about three weeks after I had gone East. I neither heard nor knew anything of a note given by Lancaster to Wells. There was no note shown me or spoken of. The first I heard of such a note was after this suit was begun.

Lancaster offered to sell me lands; this was at my house in November. At the time of this purchase it did not occur to me that these were the same lands. I sent for abstract of title immediately after my purchase of these lands.

Deposition of Thos. M. Jordan for Defense.

Tallman proposed to buy these lands early in December, 1875; the price was then fixed at $1,350.00.

The following is a certified copy of the deed from said Edward L. Wells to said George C. Tallman describing the lands in Nodaway county, Missouri, in which said Wells does "remise, release, sell, convey, and quit-claim" to said Tallman and heirs, &c., "all the right, title, interest, claim, and demand" of said Wells in said premises.

36 The said conveyance from said Wells to said Tallman, describing the real estate in Worth and Atchison counties, Missouri, were in form like the one attached, only differing in the description of the real estate, such three deeds describing all of the lands mentioned in complainants' bill of complaint:

This indenture, made on the fifth day of January, in the year of our Lord one thousand eight hundred and seventy-six, by and between Edward L. Wells and Mary C. Wells, his wife, of Macomb, Illinois, party of the first part, and George C. Tallman, of Brooklyn, N. Y., party of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey, and quit-claim, unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following-described lots, pieces, — parcels of land, to wit: The east half of the southeast and the southwest quarter of the southeast quarter and the southeast quarter of the southwest quarter of section No. twelve (12), in

township No. sixty-five (65) north, in range No. thirty-eight (38) west, situate in the county of Nodaway, in the State of Missouri. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise thereunto appertaining, and all the estate right, title, interest, and
37 claim whatever of the said party of the first part, either in law or equity, to the only proper use and benefit and behoof of the said party of the second part, his heirs and assigns, forever, and the said Edward L. Wells and Mary C. Wells, party of the first part, here expressly waive, release, and relinquish unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

EDWARD L. WELLS. [SEAL.]
MARY C. WELLS. [SEAL.]

STATE OF ILLINOIS, }
McDonough County, } *ss:*

I, J. H. Baker, a notary public in and for the said county, in the State aforesaid, do hereby certify that Edward L. Wells and Mary C. Wells, personally known to me as the same persons whose names are subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this fifth day of January, A. D. 1876.

[L. S.]

J. H. BAKER,
Notary Public.

Filed for record March 9, 1876, at 5 p. m.

HENRY GRAVES, *Recorder.*

38 STATE OF MISSOURI, }
County of Nodaway, } *ss:*

I, Henry Graves, clerk of the circuit court and *ex officio* recorder within and for the county of Nodaway and State of Missouri, do hereby certify that the foregoing deed from Edward L. Wells and Mary C. Wells to George C. Tallman is a full, true, and complete exemplification from the record in my office, recorded in deed book 42, page 625.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Maryville, Mo., this 27th day of February, 1877.

[SEAL.]

HENRY GRAVES, *Clerk,*
By THEO. F. JONES, *Dep'ty.*

Deposition of Dr. T. M. Jordan.

These deeds were delivered to George C. Tallman about the 20th of January, 1876.

Deposition of A. N. Lancaster.

I was insolvent in September, 1875, and in July, 1876, when his deposition was taken.

Deposition of E. P. Sampson.

These lands, 680 acres, were worth about $3,700.00 in October, 1875.

Lancaster held these lands at $10.00 per acre, in the lump $6,800, and wrote me to sell them at ¼ cash, as follows:

160	acres, section	12 (Nodaway), $10		$1,600 00
80	" "	15 (Worth), $8 to $10		$640 00
160	" "	17 " $8		$1,280 00
120	" "	34 (Atchison), $16		$1,920 00
	Total			$5,440 00

39 (This letter does not refer to 160 in section 15, Worth Co., Mo.)

The above and foregoing is submitted as an abstract of the evidence in the above cause, which, with the admissions in the pleadings and in the stipulat- filed herein, make complainants' case, and upon which they ask to be permitted to redeem from defendants.

JOHNSTON & JACKSON,
Att'ys for Complainants.

Defendants' Abstract.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

JOSEPH JACKSON *et al. vs.* FREDERICK H. LAWRENCE *et al.*

Abstract of Evidence.

Dr. THOMAS M. JORDAN testified on part of plaintiffs:

Remember of Mr. Lancaster conveying certain lands in counties named (Worth, Nodaway, and Atchison) to Edward L. Wells about September, 1875.

About the time mentioned I wrote to Wells by the request of Lancaster to know if he could raise Lancaster some money, $1,300 or $1,500, and hold those lands as security for payment in ninety days. That Lancaster would convey the lands absolutely, and, if they were not redeemed at ninety days, Wells should sell the land or might keep it. Wells agreed to raise the money for this length of time, directed me to have the lands conveyed and he would send the money immediately, which he did. Lancaster executed deed

and delivered it to me, and I sent it to Wells, conveying the lands.

40 About the time the note became due Wells wrote to me to see Lancaster and urge payment, which I did. Lancaster requested me to tell Wells to sell the land, naming a Mr. Matteson, of Macomb or Galesburgh, as a probable purchaser. Matteson declined to purchase, and Wells urged me to have Lancaster pay the note, as he could not get a cash offer for the land. About this time I entered into negotiations with George C. Tallman relative to purchasing the lands. Tallman said he would pay $1,300, the amount that Wells claimed Lancaster owed him. I wrote to Wells, sending him deeds prepared from him to George C. Tallman.

A few days after this I was in Macomb, where Wells resided. He handed me the deeds, having previously executed them, together with Lancaster's note, which I brought to Chicago, and shortly after that Mr. Tallman came on here, paid me the amount of money, and took the deeds.

Have known Mr. Tallman about eight years. Think Mr. Lancaster first suggested to me that Mr. Tallman might be a probable purchaser of these lands. Can't tell just what time this suggestion was made, but think it was before note fell due. Lancaster said Wells should have his money promptly; that if he, Wells, could not sell the lands to Matteson, he, Lancaster, thought Tallman would buy them. Think Tallman prepared the deeds. He handed them to me or sent them to me, but could not be positive who filled them out.

Think I had given Tallman a description of the land before the deeds were delivered. Think I advised Tallman that I knew nothing of the title to the lands, but had been assured by Lancaster that the title was good. Do not remember of having said anything to Tallman before the sale to him as to how Wells became possessed of the lands.

41 I have no recollection of hearing Tallman say anything about any such arrangement as that Lancaster was to redeem the lands.

The amount paid by Tallman to me for Wells was the amount of principal and interest due on Lancaster's note with some expenses of recording deeds and examining titles, paid by Wells, added. Tallman and I agreed on the amount he was to pay for the land about the first of January, possibly December previous. Made that agreement here in my office in the city (Chicago). The sum I had agreed was the sum Tallman and I had agreed on in January or December previous.

The note was mentioned, and I think I stated in round numbers it would not exceed $1,400. Did not know then just what additional expense Wells had been to. I do not remember of the note being shown to Tallman during the negotiations. I had the note in my office and reckoned the interest there. I told Tallman nothing further than that Wells had authorized me to deliver the deeds on payment of the amount of money, thirteen hundred and fifty dollars. Do not remember of anything being said about Wells hold-

ing the lands for the payment of the note and interest. Within a day or two of the delivery of the deeds to Tallman I handed the note to Lancaster. I made no representation to Tallman at the time of the sale as to the value of the lands. I did not know their value.

On cross-examination witness stated:

In the sale to Tallman I was acting in the interest of E. L. Wells. For two years, as near as I can remember, prior to September, 1875, Lancaster was owing Wells $500 or $600, and had been urging payment.

Lancaster suggested to me that if Wells would raise $1,300
42 or $1,500 he would convey the lands direct to Wells as security, and that Wells should keep out his pay for the money already due him, and let Lancaster have the balance. It was on this security that Wells raised the money. Lancaster was to have ninety days to repay the money and obtain a reconveyance.

The deed to Wells was to be absolute on failure of such payment, according to Lancaster's statement and agreement. Lancaster never paid the money.

George C. Tallman resides in Brooklyn, New York.

Did not see Tallman or have any negiotations with him about the purchasing of the lands until after Lancaster's interest in them had expired.

So far as I know, Tallman had at the time he purchased the lands no knowledge nor any reason to believe that Lancaster had any interest whatever in them. I did not tell Tallman nor did I know of any other person telling him that Lancaster had any agreement with Wells as to the redemption or reconveyance of the lands. I do not know what Tallman's knowledge at the time of the negotiation and purchase of the lands by Tallman may have been, but there never was anything said between him and me as to the matters between Wells and Lancaster.

43 ALVIN N. LANCASTER, on part of plaintiffs, testified as follows:

With Wells direct I had no contract for the sale of these lands. I stated to Dr. Jordan, if he could procure from Wells the sum of money I wanted, about $1,300, I would convey these lands to Wells absolutely, but that he should give me the privilege of paying it in ninety days, otherwise he might sell it as he pleased. The agreement was not in writing. At the time I executed the deed or deeds to Wells I executed a note, payable in ninety days, for $1,300, I think without interest, the interest being calculated in the note.

Of my own knowledge, I know nothing of what Wells did with the lands. I am informed that he sold them to George C. Tallman. Saw Tallman on many occasions while his negotiations with Jordan were going on. I should think on at least two occasions we had conversations relative to these lands; as I recollect it, the substance of the conversations was as to the title. I gave him the chain of title, told him the title was indisputable except an amount of back

taxes. He informed me that he had bought the lands. This was at the first conversation. Had the first conversation with him about the 15th or 16th of January.

In his cross-examination he says:

It was for the purpose of paying Wells what I owed him and for raising money to obtain some quit-claim deeds that I obtained $1,300 from Wells. I had ninety days, under our agreement, to repay Wells and obtain a reconveyance of the land. If the money was not paid within that time, I was to have no interest in the land whatever.

No part of the money was ever paid by me.

44 I never informed Tallman in any way of the arrangement between Wells and myself; I don't think he ever knew there was a note given by me to Wells. I never mentioned it. Don't think he knew of the arrangement between Wells and me.

I have not now, nor have I at any time since the expiration of the ninety days within which I was to repay Wells his money, had any interest in those lands. The lands were worth just what they could be sold for in cash. I offered them for $2,000, & couldn't get an offer.

EDWARD L. WELLS, a witness on behalf of plaintiffs, testified as follows:

I had business transactions with A. N. Lancaster. He conveyed to me lands in Missouri, and the description corresponds with that mentioned in the interrogatory, except that instead of the N. E. ¼ of S. W. ¼ of sec. 12, in 65, 38, my memorandum has it the S. E. ¼ of the S. W. ¼.

In 1872, loaned Lancaster $500 cash, for which he gave his note at 10 per cent., without security. He paid nothing, and after it had run about two years he renewed it, adding in interest; renewed for four months. After it had matured, I wrote to my brother-in-law, Dr. Jordan, to urge pay't. Could get no satisfaction, and I concluded to attach these Missouri lands. Corresponded with an attorney with that view, when I received a letter from Jordan stating that Lancaster had proposed that if I would raise him $500 or $600 in addition to what he already owed me, that Lancaster would convey me the Missouri lands by absolute deed, as security for what he would then owe me, but with a parol agreement that if he did not pay at the time the note became due, to wit, in ninety days, that the land should be mine, and I should have the right to sell it to whom I pleased.

45 I did raise him some more money, which, with his former indebtedness, amounted to just $1,300, for which he gave me his note at ninety days and conveyed the lands to me.

I received the money for the $1,300 about the last of January, 1876, from Dr. Jordan.

I handed the deeds to Tallman—to Dr. Jordan—in person about the fourth or fifth of January, 1876. I never had any correspondence or conversation with Tallman in reference to these lands. I never had any correspondence or conversation with Lancaster in

reference to conveying said lands to Tallman. My impression is that Tallman's name as grantee was in the deeds when I delivered them to Dr. Jordan.

On cross-examination he testified:

The $1,300 note was past due when I made deed to Tallman, past due twenty or twenty-two days. No part of said note had been paid when I made the deeds. I had requested Dr. Jordan to find a purchaser for the lands about ten days before that.

When he came down from Chicago he told me to make out the deeds to George C. Tallman, and when he returned to Chicago he would send me the money. So far as I was concerned the sale to Tallman was made in good faith, and to my knowledge Lancaster had nothing to do with it, nor did he in any way or manner influence or induce me to make it.

At the time I delivered the deeds to Jordan I also delivered to him Lancaster's note to be surrendered to him. So far as I know Tallman had no knowledge as to the manner in which I held the land from Lancaster.

I was to deed back the land to Lancaster if he paid the note before or at the time it became due; if he did not redeem it by that time he was not to have the right to redeem it at all, and I was to have the right to do with it as I pleased.

46 GEORGE C. TALLMAN, on behalf of defendant, testified:

At the time I purchased the lands from Wells I had not heard nor did I know of any note being held by Wells against Lancaster. I first heard of such note after this suit was brought.

There were back taxes due on the lands when I purchased them and I have since paid them. When I bought the lands from Mr. Wells, through Mr. Jordan, I supposed I was paying a moderate price—that for cash was the inducement for me to purchase. I did not and do not consider that I bought the lands for an inadequate price.

Dr. J. M. JORDAN, on behalf of defendant, testified as follows:

I think the first negotiations between Mr. Tallman and myself for the purchase of these lands was by a personal interview—not positive as to that. At an interview some time in December, 1875, Mr. Tallman proposed to buy the lands, and I think the price was then fixed at $1,350. In that first interview I think I stated that Mr. Wells, of Macomb, Illinois, had a letter from an attorney in Maryville, Missouri, stating the title was good as to the lands as far as he had examined. Tallman at that interview agreed to buy the lands. Nothing was said by me to Tallman as to Wells holding the lands as security for a debt due from Lancaster.

I was acting as the agent of Wells and contracting the land as an absolute sale. As I now remember I had two interviews with Tallman relating to this purchase. The matter was closed at the second interview. Mr. Tallman gave me his check for some $1,350, I think, and I delivered to him the deeds. I had no interest in the land whatever, other than acting as agent for Wells.

47 The following is a certified copy of the deed from A. N. Lancaster to E. L. Wells for the lands lying in Atchison county; the deeds for the lands in Nodaway and Worth counties are the same in all particulars, except as to the lands conveyed:

This indenture, made this fifth day of November, in the year of our Lord one thousand eight hundred and seventy-four, between Alvin N. Lancaster (widower), of the county of Cook and State of Illinois, party of the first part, and Edward L. Wells, of the county of McDonough and State of Illinois, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand dollars ($1,000.00), in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, and sell, unto the said party of the second part, his heirs and assigns, all the following-described lots, piece-, or parcel- of land situated in the county of Atchison and State of Missouri, to wit, the west half and the northeast quarter of the N. E. quarter of section thirty-four, in township sixty-six north, range thirty-nine west, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion or reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, hereditaments, and appurtenances, to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever,
48 and the said party of the first part, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, shall and will warrant and forever defend.

In testimony whereof the said party of the first part have hereunto set his hand and seal, the day and year first above written.

ALVIN N. LANCASTER. [SEAL.]

Signed, sealed, and delivered in presence of—

——— ———.

STATE OF ILLINOIS, } ss:
Cook County, }

I, James R. Lancaster, a notary public in and for said county of Cook, in the State aforesaid, do hereby certify that Alvin N. Lancaster, personally known to me to be the same person whose name is subscribed to the foregoing deed as grantor, appeared before me this day in person, and acknowledged that he signed, sealed, and declared the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this fifth day of November, A. D. 1874.

[SEAL.] JAMES R. LANCASTER,
Notary Public.

Filed for record Sept. 30th, 1875.

J W. SMITH, *Recorder.*

STATE OF MISSOURI, } ss:
County of Atchison, }

I, John W. Smith, clerk of the circuit court and *ex officio* recorder within and for the county of Atchison and State of Missouri, do hereby certify that the above and foregoing is a true, correct, and complete copy of deed now of record in my office, in book 22, on page 392.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at office in Rockport, Mo.,
49 this 2nd day of October, A. D. 1882.

[SEAL.] JOHN W. SMITH,
Circuit Clerk and Recorder,
By WM. T. BUCKHAM, *Deputy.*

Afterwards, at said term, and on the 11th day of November aforesaid, the following further proceedings were entered of record, to wit:

JOSEPH JACKSON *et al.*
against } 500.
FREDERICK H. LAWRENCE *et al.*

And now, November 11th, 1882, this cause came on for final hearing on bill, answer, replication, and proofs, and was argued by counsel, and upon due consideration of the premises it is considered, ordered, adjudged, and decreed by the court here that the complainants, Joseph Jackson and John C. Terhune, take nothing by their bill, but that the same be dismissed at the cost of the said complainants.

Thereupon come the said complainants by their solicitors and pray an appeal from the decision and decree of this court to the Supreme Court of the United States, and it is ordered that said appeal be allowed upon the filing and approval by one of the judges of this court of a bond in the sum of two hundred and fifty dollars.

And it is agreed by the said parties complainant and defendant, by their counsel, in open court, that the amount in controversy exceeds the sum of five thousand dollars.

50 The following testimony was produced at the hearing, to wit:

Notice to Take Depositions.

In the Circuit Court of the County of Worth, State of Missouri.

HART C. FISHER, JOSEPH JACKSON, and JOHN C. TERHUNE, Plaintiffs,
against
ALVIN N. LANCASTER, EDWARD L. WELLS, and GEORGE C. TALLMAN, Defen lants.

To the above-named defendants:

You are hereby notified that depositions of witnesses, to be read in evidence in the above-entitled cause on the part of plaintiffs, will be taken at the law office of Johnston & Jackson, in the town of

Maryville, in the county of Nodaway and State of Missouri, on the 5th day of July, 1877, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, until completed.

JOHNSTON & JACKSON,
Att'ys for Plaintiffs.

Notice to Take Depositions.

In the Circuit Court of the County of Worth, State of Missouri.

HART C. FISHER, JOSEPH JACKSON, and JOHN C. TERHUNE, Plaintiffs,
against
51 ALVIN N. LANCASTER, EDWARD L. WELLS, and GEORGE C. TALLMAN, Defendants.

To the above-named defendants:

You are hereby notified that depositions of witnesses, to be read in evidence in the above-entitled cause on the part of the plaintiffs, will be taken at the law office of Johnston & Jackson, in the town of Maryville, in the county of Nodaway and State of Missouri, on the 5th day of July, 1877, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, until completed.

JOHNSTON & JACKSON,
Att'ys for Plaintiffs.

Service of the above notice is hereby acknowledged, and issue of *dedimus* and all exceptions as to time waived.

June 29th, 1877.

A. G. LUCAS,
Att'y for Geo. C. Tallman.

Deposition.

In the Circuit Court, County of Worth, State of Missouri.

HART C. FISHER, JOSEPH JACKSON, and JOHN C. TERHUNE, Plaintiffs,
vs.
ALVIN N. LANCASTER, EDWARD P. WELLS, GEORGE C. TALLMAN, Defendants.

52 Deposition of witness produced, sworn, and examined, on the 5th day of July, in the year of our Lord 1877, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day, at the law office of Johnston & Jackson, in the town of Maryville, in the county of Nodaway and State of Missouri, before me, Arthur Andrews, a justice of the peace, in a certain cause now pending in the circuit court in the county of Worth, in the State of Missouri, between Hart C. Fisher, Joseph Jackson, and John C.

Terhune, plaintiffs, and Alvin N. Lancaster, Edward L. Wells, and George C. Tallman, defendants, on the part of the plaintiffs.

Present: Johnston & Jackson, Esq., on behalf of the plaintiff, and ———, Esq., on behalf of the defendant.

EDWARD P. SAMPSON, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

On the 9th day of August, 1875, myself and defendant Lancaster were indebted to plaintiff in the sum of one thousand dollars, due at ninety days from that date, with ten per cent. interest from maturity, of which sum I paid one hundred and eighty dollars, one hundred and three dollars in currency, and seventy-seven dollars by transfer of my credit in plaintiffs' bank, the remaining eight hundred and twenty dollars and interest is still due plaintiffs. So far as I know I have never been advised of any further payments. My information is that Alvin N. Lancaster was indebted besides that amount on the 14th of January, 1876, to an amount making in the aggregate to between two thousand and twenty-five hundred dollars. Mr. Lancaster has written me since that time that he could not pay his debts. I am indebted besides the indebtedness
53 to the plaintiffs, and have no means to pay my liabilities. I have known for the last five years of the defendants, Lancaster and Tallman, having business relations—Lancaster selling to Tallman notes and mortgages, which notes were afterwards sent to me for collection by Tallman. I had no other agency from Tallman to do business for him than the collection of those notes. I received instruction about the sale of lands said to be conveyed to Tallman by Wells after the alleged transfer by Wells to Tallman; the instructions came from defendant Lancaster.

There was a quarter section of land in Nodaway county, Mo., involved in an ejectment suit pending in Nodaway county, Mo., prosecuted by Catharine Boardman & husband, and against defendant, Lancaster, and the tenant in possession, in which case I, at the request of Mr. Lancaster, employed counsel for him about February 1st, 1876. Lancaster wrote to me to employ or continue counsel in regard to the ejectment suit against Lancaster and the tenant in possession, and that Mr. Tallman would pay the attorney's fees, and I immediately applied to Johnston & Jackson, the attorneys before retained for Lancaster, and advised them to write Tallman, and that Tallman would pay the charges, and also for them to take charge of the case. I have not been able to find the letter from Lancaster to me relating to this matter, after making search for the same in all places where I keep my letters. The letter is either lost or mislaid so that I am unable to find it. My impression is that the letter stated that the land was either transferred or sold to defendant, Tallman, by Lancaster. I was not after that time advised by either Tallman or Lancaster in regard to the management or care either of the land or the suit. I was agent for Mr. Lancaster for
54 the sale of lands now claimed by Tallman in the counties of Worth, Nodaway, and Atchison up — the 26th of January, 1876. Up to that — I was not advised by Mr. Lancaster that he,

Lancaster, had sold any of these lands to Mr. Wells. I was not advised by Lancaster that he had sold the lands to any one until the receipt of his letter, dated January 17th, 1876. I do not know whether it was a sale or transfer of the lands from Lancaster to Tallman or not. I was the sole agent of Mr. Lancaster for the collection of debts in Nodaway and Worth counties, as far as I know, and his agent for the sale of lands. I had frequent correspondence with Mr. Lancaster relating to his business from 1872 to last of January, 1876. In December, 1875, I tried to effect a sale of part of the lands in Worth county to James Boyle. I was acting as agent of Lancaster in trying to effect that sale. I never acted as the agent of Wells to my recollection. Lancaster also wrote me to effect a compromise with the attorney in the Boardman ejectment suit, authorizing me to divide half and half. About the time I was trying to effect a sale of part of the land in Worth county to Boyle I was also trying to negotiate a sale of all the lands conveyed by Wells to Tallman in Nodaway, Worth, and Atchison counties, amounting in the aggregate to six hundred and eighty acres, to Fayette Smith and Thomas H. Brown. I was acting as agent of defendant Lancaster. I tried to get $3,500 in cash from them for the lands. I think they offered me $2,000 or $2,500 cash. I supposed Smith and Brown wanted the land for speculation.

ED. P. SAMPSON.

Certificate.

STATE OF MISSOURI, }
County of Nodaway, } *ss:*

55 I, Arthur Andrews, a justice of the peace within and for the county aforesaid, do certify that in pursuance of the annexed notice came before me, at the law office of Johnston & Jackson, in the town of Maryville, in the county and State last aforesaid, Edward P. Sampson, who was by me duly sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination was reduced to writing and subscribed by him in my presence, on the day, between the hours, and at the place in that behalf first aforesaid, and that said deposition is now herewith returned; and I hereby certify that the said ——— are residents of Nodaway county, and I further certify that I was duly qualified as a notary public on the — day of ——, 187–, and my term expires ——, 18—.

In testimony whereof I have hereunto set my hand, at Maryville, Mo., in the county and State aforesaid, this 5th day of July, 1877.

ARTHUR ANDREWS,
Justice of the Peace.

Notice to Take Depositions.

In the Circuit Court of the County of Worth, State of Missouri.

HART C. FISHER, JOSEPH JACKSON, and JOHN C. TERHUNE, Plaintiffs,
against
ALVIN N. LANCASTER, EDWARD WELLS, and G. C. TALLMAN, Defendants.

56 To the above-named defendants and their attorneys:

You are hereby notified that depositions of witnesses, to be read in evidence in the above-entitled cause on the part of the plaintiffs, will be taken at the law office of Johnston and Jackson, in the town of Maryville, in the county of Nodaway and State of Missouri, on the 21st day of October, 1876, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, till completed.

JOHNSTON & JACKSON,
Att'ys for Plaintiffs.

Service of the above notice is hereby acknowledged and issue of *dedimus* and all exceptions as to time waived.
Sept. 26th, 1876.

A. G. LUCAS,
Att'y for G. C. Tallman.

EXHIBIT A.

OFFICE OF J. R. LANCASTER, 85 WASHINGTON ST.,
CHICAGO, *Jan'y 17th*, 1876.

E. P. Sampson.

D'R SIR: I am sorry, indeed, you are having trouble in your business and hope soon you may come out all right.

Mr. Tallman advises me he has purchased all those lands from Wells. You know his address; he will no doubt be glad to have you sell them. Close up his collections and sell his lands & he will pay you well. Be prompt, as he is very particular.

57 Yours, in haste, A. N. LANCASTER.

P. S. I came here from New York on Sat. and will remain about 3 weeks.

EXHIBIT B.

CHICAGO, *Jan.* 26, 1876.

FRIEND SAMPSON: For a time have been moving so fast have not had time to write. If you can sell 160 on 12 in Nodaway Co. at $10 per acre do so; 15 at $8 to $10, and 17 at $8; 34 at 10, on say ¼ cash. Mr. Tollman will pay your commission. If you can compromise the suit on sec. 36, by dividing equally, he will be satisfied with that. I have to go to Kansas in a short time, and will try and call upon

you as I go or come. I think matters will brighten up a little in the spring. What is there new? How are you, &c.

Yours, in haste, A. N. LANCASTER.

EXHIBIT C.

NEW YORK, *Dec.* 30, '75.

James Boyle, Esq.

D'R SIR: I am informed by Mr. Thompson that you want to buy part of N. ½ 15, 16, 33 I can sell you 3–80 ties, the N. ¼ and E. ½ of N. W. ¼, 240 acres; it has been held at $10 per acre, but if $8 per acre for the 3 east 80 ties is offered, ⅓, or about, cash, balance credit at 10 per cent., we will sell, but we want to sell all at one time.

The W. ½ of the N. W. ¼ we sold, and we do not own it. The securities were disposed of. Let me hear soon if you wish to buy.

58 Resp., A. N. LANCASTER,

L. Box 1028, *N. Y.*

Deposition.

In the Circuit Court of the County of Worth, State of Missouri.

HART C. FISHER, JOSEPH JACKSON, and JOHN C. TERHUNE, Plaintiffs,
vs.
ALVIN N. LANCASTER, EDWARD WELLS, and GEORGE C. TALLMAN, Defendants.

Deposition of witness produced, sworn, and examined on the 21st day of October, in the year of our Lord 1876, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day, at the law office of Johnston & Jackson, in the town of Maryville, in the county of Nowaday and State of Missouri, before me, L. M. Lane, a notary public, in a certain cause now pending in the circuit court in the county of Worth, in the State of Missouri, between Hart C. Fisher, Joseph Jackson, and John C. Terhune, plaintiffs, and Alvin N. Lancaster, Edward Wells, and Geo. C. Tallman, defendants, on the part of the plaintiffs.

Present: T. J. Johnston, Esq., on behalf of the plaintiffs, and ——, Esq., on behalf of the defendants.

EDWARD P. SAMPSON, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

My name is Edward P. Sampson. I am thirty-five years of age. My residence is Maryville, Nodaway county, Missouri. I am a traveling salesman for the firm of Buck, McCannis and Pattison,
59 of St. Joseph, Missouri. I am acquainted with all the plaintiffs in this case; personally acquainted with the defendant Lancaster. Am acquainted by correspondence with the defendant Tallman. I am not acquainted with Wells. I am not related to any of the plaintiffs. I am related to the defendant Lancaster by marriage. Lancaster married my wife's sister. I know the lands that the defendant Lancaster conveyed to the defendant Wells.

Some of those lands lie in Worth county, in sections fifteen and seventeen, in the west part of the county, four hundred acres; and in Nodaway county one hundred and sixty acres, in section 12, town. 65, R. 38; in Atchison county 120 acres, in section 34, t'w'p 39, R. 66. I saw what was pointed out to me as the land in Atchison county. Lancaster held the land at $10 per acre, part cash and part on time. I think the land was worth five dollars per acre for cash in hand one year ago. One 80-acre tract in Nodaway was worth $10 cash, and the other 80-acre tract was worth $5 cash; 160 acres of the land lying near Isadora, in Worth county, I think was worth, one year ago, $5 per acre, cash in hand. About two years ago I sold 160 acres adjoining this tract of land in Worth county for $1,200, one-third cash, and the balance in one and two years, at 10 per cent. interest. The west 80, in 15, is a good 80, and one year ago was worth $6.25 per acre cash. The middle 80 was worth about $5 per acre. East 80 was rough and gravelly and worth $2.50 per acre, in my opinion. I have been over the lands in Nodaway and Worth and am acquainted with them. I was Lancaster's agent for the sale of lands during the years 1873 and 1874 as long as he owned them.

Letter shown witness dated Jan. 17, 1876.

Lancaster wrote letter.

Letter hereto attached, marked "A;" also letter dated Chicago, Jan. 26, 1876, marked B.

60 Both letters were addressed to me and signed by N. Lancaster. These, I think, are the last letters written me in regard to the sale of these lands.

Letter shown witness dated Dec. 30, 1875, addressed to James Boyle, Esq., hereto attached, marked Exhibit C.

Witness says: I think letter was written by Mr. Lancaster. In letter dated Jan. 26, 1876, the term 160 acres, Nodaway county, means the 160 acres in section 12; that part of the letter 15, at $8 to $10, I took it to be section 15, in Worth county; and that portion 17, at $8, is in Worth county, section 17; and that portion 34, at $10, on, say, ¼ cash, is the land in Atchison county. During the time I was acting as Lancaster's agent he deeded me 120 acres in section 34, in Atchison county, being the same land heretofore mentioned. This was conveyed to me for doing his business as agent. I afterwards, at his request, conveyed the land back to Lancaster. I do not recollect of Lancaster ever conveying to me any other land, with or without consideration. At one time, when I was acting as Lancaster's agent, he filled up blank deeds and acknowledged them, five or six in number, for me to use in selling his lands, and inserting the land I might sell. I have, I think, those deeds yet. I have always supposed Lancaster was a man of considerable wealth, but knew he was hard up for money, but supposed it was for taxes and the like. I always supposed he owned a great deal of real estate. In my own business Lancaster signed blank notes for me to use, and

delivered them to me. In 1873 he gave me four of such notes. In 1874 he gave me four or six of such notes. These notes were given me to obtain credit in my business. There may have been some of the same kind of notes given me in 1875, but I do not remember of any. Lancaster told me I could use said notes in any way I pleased in my business. In June last a gentleman offered to pur-
61 chase one 80 of the 160 in Nodaway county. He offered me $10 per acre, $400 cash and $400 in one year's time, and let him pick the 80, and I wrote the proposition to Mr. Tallman, the defendant, to which he made no reply that I know of.

(Signed) EDWARD P. SAMPSON.

Certificate.

STATE OF MISSOURI, } ss:
County of Nodaway, }

I, L. M. Lane, a notary public, do certify that in pursuance to the annexed notice, came before me at the law office of Johnston & Jackson, in the town of Maryville, in the county and State last aforesaid, Edward P. Sampson, who was by me sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined, and his examination reduced to writing and subscribed by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is now herewith returned, and I hereby certify that the said Ed. P. Sampson is a resident of Maryville, Nodaway county, Missouri.

In testimony whereof I have hereunto set my hand and official seal at Maryville, in the county and State aforesaid, this 21st day of October, 1876.

[SEAL.] L. M. LANE,
Notary Public.

Qualified October 14, 1876; my commission expires June 6, 1882.

STATE OF ILLINOIS, } ss:
McDonough County, }

62 In the Circuit Court of the County of Worth, State of Missouri.

HART C. FISHER, JOSEPH JACKSON, and JOHN C. TERHUNE, Plaintiffs,
vs.
ALVIN N. LANCASTER, EDWARD WELLS, and GEORGE C. TALLMAN, Defendants.

Deposition of a witness produced, sworn, and examined on the seventeenth day of March, in the year of our Lord 1876, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the law office of C. F. Wheat, in the city of Macomb, in the county of McDonough and State of Illinois, before me, Geo. C. Ross, a notary public in and for said city of Macomb, in said McDonough county, State of Illinois, in a certain cause now

pending in the circuit court of the county of Worth, in the State of Missouri, between Hart C. Fisher, Joseph Jackson, and John C. Terhune, plaintiffs, and Alvin N. Lancaster, Edward Wells, and George C. Tallman, defendants, on the part of the plaintiffs.

Present: C. F. Wheat, Esq., on behalf of the plaintiffs, and D. G. Tunnicliff, Esq., on behalf of the defendants.

EDWARD L. WELLS, a witness of lawful age, being produced, sworn, and examined on the part of the said plaintiff, deposeth and saith:

Int. 1. What is your name, age, place of residence, and occupation, and are you or not a party to this suit, and are you or not acquainted with the parties to this suit?

Objected to.

Ans. 1. Edward L. Wells. Age, 33. Hardware merchant. Macomb, McDonough Co., Ills. Have no positive knowledge of being a party to this suit, having never been served with any notice
63 or other process or papers in the case. Am not acquainted with the plaintiffs to the suit. I know Alvin N. Lancaster, and am not personally acquainted — George C. Tallman, but have heard of him.

Objected to.

Int. 2. Did you ever have any business transactions with said Alvin N. Lancaster, and did he ever convey to you the northwest quarter of section seventeen (17), township sixty-six (66), range thirty-two (32), and the northeast quarter and the east one-half (½) of the northwest quarter section fifteen (15), township sixty-six (66), range thirty-three (33), in Worth county, Missouri; also the east one-half of the southeast quarter, and the southwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section twelve (12), in township sixty-five (65) north, and range thirty-eight (38), in Nodaway county, Mo.; also the west half of the northeast quarter, and the northeast quarter of the northeast quarter of section thirty-four (34), township sixty-six (66), range thirty-nine (39), in Atchison Co., Mo.? If yea, state fully what the nature of such business transactions were, and why and for what purpose he conveyed said lands to you, and when the same occurred.

(Objected to.)

Ans. 2. I did have business transactions with said Lancaster; he did convey me land in Missouri, and the description corresponds with that mentioned in the interrogatory, except that instead of the N. E. ¼ of S. W. ¼ of sec. 12 in 65, 38, my memorandum has it the S. E. ¼ of S. W. ¼ of sec. 12 in same township and range. The nature of said transactions was this: About the year 1878 I loaned him $500 cash, for which he gave me his note, at 10 per cent. int., without security; he paid me nothing, and after it had run about two years he renewed it, adding principal to interest, and giving me a new note, I think at four months. Shortly
64 after the last note became due I wrote him, pressing payment, but getting no answer from him, I then wrote my

brother-in-law, Dr. T. M. Jordan, to call on him and urge payment of my debt, and I learned from Dr. Jordan that he could get no satisfaction for me from Lancaster, but only curses, and I then concluded to attach these Missouri lands. I had commenced correspondence with an attorney with that view when I received a letter from Jordan stating that Lancaster had proposed that if I would raise him $500 or $600 in addition to what he already owed me that he, Lancaster, would convey me said Missouri lands by an absolute deed as security for what he would then owe me, but with a parol agreement that if he did not pay me the note at the time it should become due, to wit, in ninety days, that the land should become mine, and I should have the right to sell it to whom I pleased. I did accordingly raise him some more money, which, with his former note and interest, and including interest on the whole for ninety days, amounted to just even $1,300, thirteen hundred dollars, for which he gave me his note at ninety days, and conveyed to me said lands to secure the same, as before stated. I sent the old note and the additional money to make the $1,300 to my brother-in-law, T. M. Jordan, to deliver to said Lancaster, Sept. 16th, A. D. 1875, who in a few days returned to me said Lancaster's note for said $1,300.00 and sent deed for said lands.

(Objected to.)

Int. 3d. Did you ever receive the money upon said $1,300 note mentioned by you; if yea, when and from whom did you receive the same? Have you now got said note; and, if not, what did you do with the same? Have you made any deed conveying said lands to any person; if so, when and to whom did you make such
65 deed; at whose instance and request did you make such deed? State fully all the facts and circumstances relative to the same.

(Objected to.)

Ans. 3. I received the money for the said $1,300 note about the last of January or the first of February, A. D. 1876. Received it from Dr. T. M. Jordan. He sent the same to me from Chicago. I handed the note to Dr. Jordan in person about the fourth or fifth of January, 1876, before I got the money. About January fourth, 1876, when Dr. Jordan was here, he told me to deed said lands to George C. Tallman. I made three deeds about that date; that is, the time Dr. Jordan was here, conveying said lands, according to my recollection, to George C. Tallman. I made the deeds at the request of Dr. T. M. Jordan.

(Objected to.)

Int. 4. Did said Alvin N. Lancaster or said George C. Tallman ever request you to convey said lands to said Tallman? And did you have any correspondence or conversation with either of them in regard to your conveying said lands to any one? If yea, state what such correspondence or conversation was, and if you have any

letter or letters from either of them upon the subject, please attach the same or a copy thereof to this your deposition.

(Objected to.)

Ans. 4. I received a letter from Lancaster, dated November second, 1875, saying that he could sell me one piece of the land. I have attached said letter to this my deposition. I never answered said letter, because I did not want the paper or notes mentioned in said letter.

I never had any correspondence or conversation with said Tallman in reference to said lands. I never had any conversation
66 with said Lancaster in reference to conveying said lands.

(Objected to.)

Int. 5. Are you certain that the name of George C. Tallman was written in the deeds at the time when you delivered the same to said Jordan? And, if you are not certain, please state fully why not.

(Objected to.)

Ans. 5. My impression is that his name was in those three deeds. I can't answer positively, because I made some other deeds and some of them were left in blank.

(Objected to.)

Int. 6. To whom did you deliver the deeds mentioned in your answer to interrogatory 3d?

(Objected to.)

Answer 6. I delivered said deeds to said J. M. Jordan.

(Objected to.)

Cross-examined by D. G. TUNNICLIFF, as attorney for George C. Tallman.

Int. 1. Please state whether or not the $1,300 note you held against Lancaster had become due or past due before you made said deed to Tallman, and, if past due, how long past, and whether or not you had made any effort to have said Lancaster pay the same, and, if so, what, and whether or not any part of it had been paid.

(Objected to.)

Ans. 1. The note was past due when I made the deed—past due twenty-one or twenty-two days. I had written Lancaster four different letters requesting him to pay the note, all were written before I made the deeds, two before the note became due, by about ten or twelve days, and in these letters I informed him that he must pay the note as soon as it became due. After the note became
67 due I wrote him twice more, requesting him to pay. He didn't answer any of these letters. No part of said note had been paid at the time I made said deeds.

(Objected to.)

Int. 2. State whether or not, prior to your making said deed to said Tallman, as you say, at the request of said Jordan, you had authorized or requested said Jordan to sell or find a purchaser for said land for you; if so, about how long before, and what, if anything, did said Jordan inform you as to his having affected a sale of said land, and especially to whom, if any one, did he say he had sold it, and for how much.

(Objected to.)

Ans. 2. I had requested him to find a purchaser a short time before that—about ten days. When he came down here from Chicago he told me to make out the deeds to George C. Tallman, and that when he returned to Chicago he would send me the money; he said he had sold the land to Tallman and for me to make the deeds to him (Tallman); he said he had sold it for the amount of my claim, which was $1,300 and the interest after the note became due. When I say he told me to make the deeds to Tallman, that is my best recollection, but I am not positive, as he might have told me to make them in blank, but I am positive that he told me that he had sold the lands to Tallman.

(Objected to.)

Int. 3. State whether or not said sale to said Tallman was or was not, so far as you were concerned, made in good faith and *bona fide*, and had Lancaster anything to do with or in any way or manner influenced or induced you to make said sale to said Tallman?

(Objected to.)

68 Ans. 3. So far as I was concerned it was made in good faith, and to my knowledge Lancaster had nothing to do with it; nor did said Lancaster in any way or manner influence or induce me to make said sale.

(Objected to.)

Int. 4. At the time you delivered said deed to said Jordan for said Tallman did you or not deliver him (Jordan) your note of $1,300 against Lancaster to be surrendered up to said Lancaster upon your receiving said purchase money from said Tallman?

(Objected to.)

Ans. 4. I did.

(Objected to.)

Int. 5. So far as you know had said Tallman any knowledge as to the manner in which you held said land from said Lancaster; that is, that you held it as security for your said debt of $1,300.00?

(Objected to.)

Ans. 5. Not that I know of.

(Objected to.)

Int. 6. In answer to direct interrogatory 5th you spoke of making some deeds which were left blank; what part were left blank, and

where was the land situated; that is, in what State; how came you to have anything to do with such land, and how came you to make such deeds; please explain the matter?

(Objected to.)

Ans. 6. The names of the grantees. I can't state positively as to the lands before mentioned in my deposition; the other lands were situated in Michigan, except as to the Missouri lands, which I have before explained. How I came by the other lands I really
69 know nothing, how or who conveyed them to me; the first I knew they were conveyed to me, people would write to me asking what I would take for my interest, whereas I didn't know I had any interest in the lands, but I finally heard from my brother-in-law, Dr. J. M. Jordan, that said Lancaster had purchased some tax titles on some lands in Michigan, and for his own convenience, without my knowledge or consent, had taken the deeds to me. He had had deeds taken to me in some instances several years ago, and would then be writing to me asking me to make deeds, which I did; and not wishing to be annoyed in this way any more, as I was closing out all I had to do with him, I made deeds to those lands with the grantees names left blank, as I now remember, and directed my brother-in-law, Dr. Jordan, to give such deeds up to Lancaster. As to said lands, except said Missouri lands, I had no interest, nor never claimed any.

(Objected to.)

Int. 7. Do you know of any motive said Lancaster had in having such deeds made to you? Was he or not as then considered wealthy; I mean for said land other than the Missouri lands?

(Objected to.)

Ans. 7. I don't know of any motive he had, but suppose it was to enable him to buy some other title on the land. So far as I know he was considered in good circumstances. I always supposed Lancaster was wealthy.

(Objected to.)

Int. 8. Had your sale of the Missouri land to Tallman and your making out said deeds to said other lands or titles any connection with each other, and had Tallman any knowledge, so far as you know, of your holding said other titles?

(Objected to.)

70 Ans. 8. They were two different transactions, and had no connection with each other. Tallman had no knowledge, that I know of, of my holding such other titles.

(Objected to.)

Int. 9. Were any of said deeds, wherein the grantees' name was left blank, ever sent back for your reacknowledgement with the grantees' name filled in? If so, about how many were so sent back, and state, if you remember, whose name was so filled in as grantee; did

you, or not, acknowledge such deed or deeds, and return them? How soon was this after your first delivery thereof to said Jordan?

(Objected to.)

Ans. 9. There was one deed sent back, and only one that I now remember. My recollection is that it was for a piece of the Michigan land; the grantee was George C. Tallman as filled in. I did take it before the same officer who had taken the first acknowledgement, and reacknowledged the same and returned it to Dr. Jordan, who had sent it to me for such reacknowledgement; it was but a few days after the first delivery to said Dr. Jordan.

(Objected to.)

Int. 10. Why was it, when Lancaster wrote you the letter attached to your deposition, you did not sell, or attempt to sell, the land therein mentioned at the price therein stated?

(Objected to.)

Ans. 10. I didn't want the paper, and didn't have faith in Lancaster that the land was worth what he said it was.

(Objected to.)

Int. 11. Why didn't you think it worth that? I don't see that the letter fixed any price. How much did you consider all
71 the Missouri land as worth?

(Objected to.)

Ans. 11. Upon examining the letter more closely, I see he doesn't fix any price; from hastily looking at the letter I thought he said he would sell the piece mentioned in the letter for $1,280. Having lost confidence in Lancaster, I didn't pay much attention to the letter, and the fact is I can't read his letters more than half the time. I don't know what they are worth; I never saw them, but I know that Lancaster offered to sell the whole list of said Missouri lands to me for $2,000 cash, and I refused to give it, and my note was to come out of the $2,000. I mean my note of six hundred and some dollars, his offer to me being made before I held the note of $1,300.

(Objected to.)

Int. 12. At the time you received said deed from said Lancaster for said Missouri lands state whether or not it was your understanding that you were to redeed the land back to him, provided he paid you the $1,300 note you held against him on or before the maturity of the note, and if he did not redeem it by that time, was he to have the right to do so after that, or was you then to have the right to sell it and do what you pleased with it?

(Objected to.)

Ans. 12. I was to deed back the land if he paid the note before or at the time it became due. If he did not redeem it by that time he

was not to have the right to redeem it at all, and I was to have the right to do with it as I pleased.

(Objected to.)

Int. 13. Please state whether or not prior to or by the 1st day of January, A. D. 1876, said Lancaster had or had not, as between you and him, forfeited to you all right to said Missouri land, as you understood it?

72 (Objected to.)

Ans. 13. According to my understanding, he had.

(Objected to.)

Int. 14. In obtaining said deed from said Lancaster to you for said Missouri land to secure your said loan to him, and afterwards in selling it to Tallman, was or was not your brother-in-law, said Doctor T. M. Jordan, acting on your behalf and as your agent and with your authority and consent?

(Objected to.)

Ans. 14. He was.

(Objected to.)

Int. 15. Was said sale to said Tallman by you made to accommodate Lancaster or for his benefit, or was he in any way interested in or connected with said sale, so far as you know, except that he would have his note paid, and was or not said sale made to said Tallman by you through said Jordan for the sole and only purpose of obtaining your money out of said land? If there was any other purpose state what it was.

(Objected to.)

Ans. 15. Lancaster had nothing to do with it, to my knowledge, nor was it made to accommodate him, so far as I know; there was no other purpose in making such sale, except that I might get the money on my note out of said land.

Re-examination by C. F. WHEAT, attorney for plaintiff:

Int. 1. At the time you made the deeds to Tallman, and delivered the same to T. M. Jordan, did you understand and think that the Missouri lands were actually yours, and that the right of said Lancaster to redeem from you has actually gone?

(Objected to.)

73 Ans. 1. That was my understanding—that if the note was not paid when it was due the lands were mine.

(Objected to.)

Int. 2. If you had understood the lands were actually yours, and that Lancaster had forfeited all right to the same, would you have

sold the same for the amount of your note, or would you not have tried to have got more for them?

(Objected to.)

Ans. 2. That was all I had in them and all I wanted to make out of them; I wanted to get my money back.

(Objected to.)

Int. 3. Did you ever hear from any person, if so from whom, that Tallman paid, or was to pay, more for said lands than the amount of your note; and, if yea, how much more?

(Objected to.)

Ans. 3. I never heard from any one that he was to pay any more.

(Objected to.)

NEW YORK, *Nov. 2nd*, '75.

E. L. Wells, Esq.

D'R SIR: James Hennegin, of Isadora, Worth Co., Mo., purchased S. W. ¼, 17, 66, 32, at $1,280, and paid ¼ then and ¼ since, and now owes ½; he also owns a large farm adjoining, and now wants to know what I will, or you will, sell N. W. ¼, 17, 66, 32, and take his note and mortgage, payable 1, 2, and 3 years; 10 per cent. If not in debt would at once say he is good and prompt. No better 10 per cent. paper could be made. This is the poorest ¼. What shall I say? Can you use such paper?

Resp. A. N. LANCASTER,
74 P. O. Box 1028, N. Y.

This is the letter spoken of in my deposition.

E. L. WELLS.

STATE OF ILLINOIS, }
County of McDonough, } ss:

I, Geo. C. Ross, a notary public in and for the city of Macomb, in the county and State aforesaid, do certify that in pursuance of the annexed notice and commission came before me, at the law office of C. F. Wheat, Esq., in the city of Macomb, in the county and State aforesaid, Edward L. Wells, who was by me duly sworn upon his oath to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination was reduced to writing and subscribed by him in my presence on the day, between the hours and at the place in that behalf first aforesaid, and his said deposition is now herwith returned, and I hereby certify that the said Edward L. Wells is a resident of the city of Macomb, in said county of McDonough and State of Illinois.

In testimony whereof, I have hereunto set my hand and fixed my official seal, at the city of Macomb, in said McDonough county, Illinois, this 17th day of March, A. D. 1876.

[SEAL.] GEORGE C. ROSS, *N. P.*

STATE OF ILLINOIS, } ss:
McDonough County, }

I, Allen L. Sparks, clerk of the county court in and for the county and State aforesaid, the same being a court of record, do
75 hereby certify that Geo. C. Ross, Esq., by whom the foregoing annexed certificate was made, and who has thereunto subscribed his name, was at the date thereof an acting notary public in and for said county and State, duly appointed, commissioned, and qualified, as the same appears of record in my office, and that all his acts as such are entitled to full faith and credit, and that his signature thereto is genuine.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court, at my office, in Macomb, this 20 day of March, A. D. 1876.

[SEAL.] A. L. SPARKS, *Clerk.*

In the Circuit Court for the County of Worth, State of Missouri.

HART C. FISHER, JOSEPH JACKSON, & JOHN C. TERHUNE, Plaintiffs,
against
ALVIN N. LANCASTER, EDWARD WELLS, & G. C. TALLMAN, Defendants.

To Alvin N. Lancaster, Edward Wells, & G. C. Tallman, the above-named defendants:

You are hereby notified that the depositions of witnesses to be read in evidence in the above-entitled cause, on the part of the plaintiffs, will be taken at the law office of C. F. Wheat, in the city of Macomb, in the county of McDonough and State of Illinois, on the 17th day of March, A. D. 1876, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and that the taking of the said depositions, if not completed on that day, will be continued from day to day
76 at the same place and between the same hours until completed.

JOHNSTON & JACKSON,
Att'ys for Plaintiffs.

I, C. M. Hunt, sheriff of the county of Worth and State of Missouri, do hereby certify that I served the within notice by posting a copy thereof in the office of the clerk of the circuit court of Worth county and State aforesaid, this 25th day of February, A. D. 1876.

C. M. HUNT,
Sheriff of Worth County, Missouri.

STATE OF MISSOURI, } ss:
County of Worth, }

To any judge, notary public, justice of the peace, or other judicial officer of the State of Illinois, or to any —, Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause to come before you to be examined as witnesses in a cause pending in our circuit court for the county of Worth, in the State of Missouri, wherein Hart C.

Fisher, Joseph Jackson, and John C. Terhune are plaintiffs, and Alvin N. Lancaster, Edward Wells, and G. C. Tallman, defendants, all and every such person, and at such time and place as shall be named to you for that purpose by the said plaintiffs, their attorneys, or agent. And we command you to examine all and every such person upon his oath or solemn affirmation, first made or taken before you, to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the
77 to 87 said parties, and that you do take such his examination, and reduce the same into writing. When you shall have so taken his examination you are to cause the witness to sign the same, and to that and each examination, at the foot thereof, you are to append your certificate, setting forth the facts that the examination was subscribed and sworn to or affirmed by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness if known to you. Should any paper or exhibit be produced or proven or referred to you by the witness, you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity, and attach the same to his examination. The examination thus taken you will certify under your hand and seal of office, or cause to be accompanied by a certificate of your official character, attested by the seal of the State; or, should it be more convenient, such authentication and proof of your official character may be made by the certificate and seal of the clerk of any court of record of any county of the State, district, or territory in which you reside, stating also, in addition to the facts of his being clerk and that the court is one of record, that at the time when the depositions were taken you were an acting judge (or other such officer to whom this commission is addressed), and duly commissioned as such. And you will return the same and all exhibits produced to you, annexed hereto, carefully closed up and under your seal, directed to the clerk of the circuit court in and for Worth county and State of Missouri, with the names of the said parties litigant endorsed thereon, with all convenient speed.

Witness W. H. Campbell, clerk of said circuit court, with
88 the seal thereof hereto affixed. Done at office in Grant City, Mo., this 25th day of February, A. D. 1876.

[SEAL.] W. H. CAMPBELL,
Clerk of Circuit Court.

In the Circuit Court of Worth County, State of Missouri.

HART C. FISHER, JOSEPH JACKSON, and JOHN C. TERHUNE, Plaintiffs,
against
ALVIN N. LANCASTER, EDWARD WELLS, and GEORGE C. TALLMAN, Defendants.

To the above-named plaintiffs and their attorneys:

You are hereby notified that depositions of witnesses to be read in evidence in the above-entitled cause on part of the defendant, George C. Tallman, will be taken at the office of Messrs. Wood and Loomis, No. 122 La Salle street, city of Chicago, in the county of Cook and

State of Illinois, on Monday, the 18th day of September, A. D. 1876, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, and that the taking of said depositions, if not completed on that day, will be continued from day to day at the same place, and between the same hours, until completed.

A. G. LUCAS.
Att'y for Geo. C. Tallman.

Service of the above notice is hereby acknowledged, and issue of *dedimus* and all exceptions as to time waived, this 2nd day of September, A. D. 1876.

J. H. PIERCE ET AL.,
Att'ys for Plaintiffs.

89 STATE OF MISSOURI, } ss:
County of Worth, }

To any judge, notary public, justice of the peace, or other judicial officer of the State of Illinois, or to any —, Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause to come before you to be examined as witnesses in a cause pending in our Worth circuit court for the county of Worth, in the State of Missouri, wherein Hart C. Fisher, Joseph Jackson, and John C. Terhune are plaintiffs and Alvin N. Lancaster, Edward Wells, and George C. Tallman are defendants, all and every such person and and at such time and place as shall be named to you for that purpose by the said George C. Tallman, defendant, his attorney or agent. And we command you to examine all and every such person upon his oath or solemn affirmation, first made or taken before you, to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties; and that you do take such his examination and reduce the same into writing. When you shall have so taken his examination you are to cause the witness to sign the same; and to that and each examination, at the foot thereof, you are to append your certificate setting forth the facts that the examination was subscribed and sworn to or affirmed by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven or referred to by the witness you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity, and attach the same to his exam-
90 ination. The examination thus taken you will certify under your hand and seal of office, or cause to be accompanied by a certificate of your official character, attested by the seal of the State; or, should it be more convenient, such authentication and proof of your official character may be made by the certificate and seal of the clerk of any court of record of any county of the State, district, or Territory in which you reside, stating also, in addition to the facts of his being clerk, and that the court is one of record, that at the time when the depositions were taken you were an acting judge (or other such officer, to whom this commision is addressed),

and duly commissioned as such. And you will return the same and all exhibits produced to you, annexed hereto, carefully closed up, and under your seal directed to the clerk of the circuit court in and for Worth county and State of Missouri, with the names of the said parties litigant endorsed thereon, with all convenient speed.

Witness W. H. Campbell, clerk of said circuit court, with the seal thereof hereto affixed. Done at office in Grant City, Mo., this 10th day of August, A. D. 1876.

[SEAL.] W. H. CAMPBELL,
Clerk of Court.

Deposition of witness produced, sworn, and examined on the eighteenth day of September, in the year of our Lord 1876, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the city of Chicago, in the county of Cook and State of Illinois, before me, a notary public in and for said Cook county and State of Illinois, at my office in the city of Chicago, 122 La Salle street, room 25, in a certain cause now pending in
91 the circuit court of Worth county, State of Missouri, between Hart C. Fisher, Joseph Jackson, & John C. Terhune, plaintiffs, and Alvin N. Lancaster, Edward Wells, and John C. Tallman, defendants.

On the part of the defendants, THOMAS M. JORDAN, a witness of lawful age, being produced, sworn, and examined on the part of the defendants, deposeth and saith:

Q. State your name.
A. Thomas M. Gordon.
Q. State your business.
A. Grain and provision business.
Q. Have you given testimony previously in this case?
A. I have.
Q. Are you able to state whether the first negotiations between you and Mr. Tallman for the purchase of lands in question commenced by letter or personal interview with him?
A. I think it was a personal interview. I cannot be positive as to that.
Q. If at a personal interview state briefly what passed between you.
A. At an interview some time in December, 1875, Mr. Tallman proposed to buy the land, and I think the price was then fixed at some $1,350.
Q. Did you, at the first interview, say anything to Tallman with regard to the condition of the title of the lands in question?
A. I think I stated that Mr. Wells, of Macomb, Ill., had a letter from an att'y in Maryville, Missouri, stating the title was substantially good to the lands as far as he had examined.
Q. Did Tallman at that interview agree to buy the lands?
A. Yes; he did.
92 Q. Was there anything said by you to Tallman as to Wells holding the lands as security for a debt due from Lancaster?
A. There was not.

Q. Were you acting as the agent of Wells, contracting the land to Tallman as an absolute sale?

A. I was.

Q. How many interviews did you have with Tallman as to this purchase?

A. Two, as I now remember.

Q. At which interview was the matter closed up?

A. At the second or last interview Mr. Tallman gave me his check for some $1,350, I think, & I delivered to him the deeds.

Q. Had you any interest in the land other than as acting as agent for Wells?

A. None whatever.

T. M. JORDAN.

Subscribed & sworn to before me on the day, at the place, and within the hours first aforesaid.

[SEAL.] ARTHUR G. OTIS,
Notary Public.

I, Arthur G. Otis, a notary public within and for the county of Cook, in the State of Illinois, do certify that, in pursuance of the within commission and notice, came before me, at my office in the city of Chicago, 122 La Salle —, room 25, in the county and State last aforesaid, Thomas M. Jordan, who was by me sworn to testify the truth and the whole truth, of his knowledge, touching the matter in controversy aforesaid; that he was examined, and his examination reduced to writing and subscribed by him in my pres-
93 ence, on the day, between the hours, and at the place in that behalf first aforesaid, and his deposition is now herewith returned. And I further certify that said Thomas M. Jordan is a resident of the county of Cook, in said State of Illinois.

Given at the city of Chicago, in the county of Cook and State of Illinois, this 19th day of September, 1876.

[SEAL.] ARTHUR G. OTIS,
Notary Public.

STATE OF ILLINOIS, }
Cook County, } ss:

I, Herman Lieb, clerk of the county court of Cook county, the same being a court of record, do hereby certify that Arthur G. Otis, Esq., whose name is subscribed to the certificate to the annexed deposition, was, at the time of signing the same, a notary public in and for Cook county, duly commissioned, sworn, and acting as such, and authorized to administer oaths and take depositions; that I am well acquainted with his handwriting, and I verily believe that the signature to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Chicago, in the said county, this 21st day of Sept., 1876.

[SEAL.] HERMANN LIEB, *Clerk.*

STATE OF MISSOURI, } ss:
County of Worth, }

To any judge, notary public, justice of the peace, or other judicial officer of the State of New York, or to any —, Greeting:

Know ye that we, in confidence of your prudence and fidel-
94 ity, do by these presents authorize you to cause to come before you to be examined as witnesses in a cause pending in our circuit court for the county of Worth, in the State of Misssouri, wherein Hart C. Fisher, Joseph Jackson, and John C. Terhune, of Nodaway county, Missouri, are plaintiffs, and Alvin N. Lancaster, Edward Wells, and George C. Tallman are defendants, all and every such person, and at such time and place as shall be named to you for that purpose by the said George C. Tallman, defendant, attorney or agent. And we command you to examine all and every such person upon his oath or solemn affirmation, first made or taken before you, to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties; and that you do take such his examination and reduce the same to writing. When you shall have so taken his examination you are to cause the witness to sign the same; and to that and each examination, at the foot thereof, you are to append your certificate setting forth the facts that the examination was subscribed and sworn to, or affirmed by, the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven, or referred to by the witness you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity and attach the same to his examination. The examination thus taken you will certify under your hand and seal of office, or cause to be accompanied by a certificate of your official character, attested by the seal of the State; or should it be more convenient such authentication and proof of your official character may be made by the certificate of and seal of the
95 clerk of any court of record of any county of the State, district or Territory in which you reside, stating also, in addition to the facts of his being clerk, and that the court is one of record, that at the time when the depositions were taken you were an acting judge (or other officer to whom this commission is addressed), and duly commissioned as such. And you will return the same and all exhibits produced to you, annexed hereto, carefully closed up and under your seal, directed to the clerk of the circuit court in and for Worth county and State of Missouri, with the names of the said parties litigant endorsed thereon, with all convenient speed.

Witness W. H. Campbell, clerk of said circuit court, with the seal thereof hereto affixed. Done at office in Grant City, Mo., this 25th day of September, A. D. 1876.

W. H. CAMPBELL,
Clerk of Court.

In the Circuit Court of Worth County, Missouri.

HART C. FISHER, JOSEPH JACKSON, & JOHN C. TERHUNE, Pl'ffs,
against
ALVIN N. LANCASTER, EDWARD WELLS, and G. C. TALLMAN, Def'ts.

To the above-named plaintiffs and their attorneys of record:

You are hereby notified that depositions of witnesses to be read in evidence in the above-entitled cause on part of the defendant, George C. Tallman, will be taken at the law office of Messrs. Vancott and Winslow, southeast corner of William and Pine streets, in the city of New York, on the 16th day of October, A. D. 1876,
96 between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day at the same place and between the same hours until completed.

A. G. LUCAS,
Att'y for G. C. Tallman.

Service of the above notice is hereby acknowledged, and issue of *dedimus* and all exceptions to time waived, this 25th day of Sept., 1876.

J. H. PIERCE ET AL,
Att'ys for Plaintiffs.

Deposition of witness produced, sworn, and examined on the 16th day of October, in the year of our Lord 1876, between the hours of eight o'clock in the forenoon and six in the afternoon of that day, at the law office of Messrs. Vancott & Winslow, southeast corner of William and Pine streets, in the city of New York, in the county of New York, and State of New York, before me, John Burrie, a notary public, in a certain cause now depending in the circuit court of the county of Worth, in the State of Missouri, between Hart C. Fisher, Joseph Jackson, and John C. Terhune, of Nodaway county, Missouri, plaintiffs; and Alvin N. Lancaster, Edward Wells, and George C. Tallman, defendants, on the part of the defendants.

GEORGE C. TALLMAN, of lawful age, being produced, sworn, and examined on the part of the defendants, deposeth and saith:

Question. Was Mr. Alvin N. Lancaster ever your agent for any purpose?

Answer. He was not.

Question. In what way, if any, was he ever employed by you?

97 A. He was never employed by me except in this way. Sometimes when he thought he saw a chance to sell lands owned by me he would inform me of it with a view to get his five per cent. commission. In such cases I have sometimes authorized him to sell, and when he sold I would pay him his commission. In this I dealt with Mr. Lancaster as I did with others who gave me such information. In no other sense was he my agent or employed by me.

Q. Explain your transaction with Mr. E. L. Wells in reference to Michigan lands some three or more years ago.

A. This land consisted of 160 acres which I owned, and some man living near Mr. Wells, and whom I understood Mr. Wells knew, procured and held a tax title to the same. I was informed that Mr. Wells could arrange a settlement by my sending him a deed with a request to settle with the tax-title man in any way he could. There was no consideration paid by Mr. Wells, and the transaction was one of convenience only. This conveyance was so made by me some three to four years since, and having learned that Mr. Wells had done nothing in effecting a settlement, and at my request he conveyed back to me the land. The tax title is still outstanding, and the premises I do not consider of any value to me. I paid Mr. Wells no consideration whatever for his conveyance back to me. So far as any interest I have or ever have had in the land is concerned it is worthless to me.

Q. What, if any, knowledge have you of the value of the Missouri lands?

A. I can only say that when I bought of Mr. Wells, through Mr. Jordon, I supposed I was paying a moderate price; that for cash was the inducement for me to purchase. Mr. Jordon thought they were cheap at that price, & I relied on his judgment. I hoped
98 it would turn out so. But within the last thirty days I have bought western lands for cash which I consider equally valuable for two dollars per acre. I am not sure now that the Missouri lands in question could be sold for enough to reimburse me. I did not and do not consider that I bought the lands for an inadequate price.

Q. Upon reflection, what do you now say as to whether Mr. Lancaster was referred to or spoken of during your negotiation with Mr. Jordan acting for Mr. Wells?

A. He was not referred to in any way, and I did not learn that he ever owned the lands or had any interest in them until after the purchase was completed and the lands paid for. I did not learn of it until after I had gone East and returned to Chicago, which was some three weeks after the purchase. I think my attention was first called to the fact that Lancaster once owned the lands by what I saw noted in an abstract of title which I sent for immediately after I purchased them, and which was sent to me from the counties where the lands were located. Upon my return to Chicago I then saw Lancaster and got from him some information I wanted about the title.

Q. Did you at the time of your purchase or during the negotiations with Jordan know or hear anything of a note said to have been given by Lancaster to Wells and in some way connected with the sale of the lands by Lancaster to Wells?

A. I neither heard nor knew anything of it. There was no note shown to me or spoken of or referred to.

Q. When did your first hear of such note?

A. Not until after this suit was commenced.

Q. When you bought those lands were they subject to any

99 back taxes, and, if so, to what amount, and have you since paid them?

A. Yes; and they amounted to something over one hundred dollars, and I have since paid them.

Q. State how your attention was first called to the fact that these lands were for sale, and by whom and what was said?

A. In the latter part of December, 1875, I was in the office of Meade & Company, at 155 La Salle street, on business with them. There I met Mr. Jordan casually, and he asked me if I would buy some lands in Missouri which he said he would sell at a good bargain for cash, as the party must have the money. I inquired about the location and quantity and finally told him I would take them. It did not occur to me that the Mr. Wells for whom Mr. Jordan was acting was the same man I have referred to in connection with the Michigan lands, and my attention was not called to that circumstance until I received the Michigan deed referred to in the same package with the other deeds of Missouri lands. I did not know Mr. Wells personally; had no acquaintance with him.

Q. Did Mr. Lancaster, in November, 1875, or at any time to your knowledge, offer to sell to you the Missouri lands at your house in Brooklyn or elsewhere?

A. He did not, to my knowledge.

Q. Did he offer to sell you any lands at your house in Brooklyn in November, 1875; and, if yes, state what was said and what occurred?

A. Mr. Lancaster was at my house in November, 1875, and desired me to buy several thousand acres of mineral lands located in various counties in Missouri. I heard what he had to say and told him I had no money and did not wish to buy. I do not
100 know whether the lands I bought of Wells are included in what Mr. Lancaster referred to or not. I did not give any attention whatever to the details of their location, as I could not buy, and did not entertain Mr. Lancaster's proposition at all. I dismissed the matter from my mind, and it did not seem to me when I bought of Mr. Wells that his lands were a part of what Mr. Lancaster had referred to at my house in Brooklyn. If Mr. Lancaster spoke to me of lands, which included what I bought of Mr. Wells, I am not aware of it; it is news to me.

GEO. C. TALLMANN.

Subscribed and sworn to before me, on the day, at the place and within the hours first aforesaid.

JOHN CURRIE,
Notary Public, Kings County, New York.

I, John Currie, a notary public within and for the county of New York, in the State of New York, do certify that in pursuance of the annexed commission and notice, came before me at the law office of Messrs. VanCott & Winslow, southeast corner of William and Pine streets, in the city of New York, in the county and State last aforesaid, George C. Tallman, who was by me duly sworn, to testify the whole truth of his knowledge touching the matter in controversy

aforesaid; that he was examined and his examination reduced to writing and subscribed by him in my presence, on the day and between the hours and at the place in that behalf first aforesaid, and his said deposition is now herewith returned.

And I further certify that said George C. Tallman is a resident of the city of Brooklyn, in the county of Kings, in said State of New York.

101 Given at the city of New York, in the county of New York, and State of New York, this 16th day of October, 1876.

JOHN CURRIE,
Notary Public.

STATE OF NEW YORK, }
City and County of New York, } ss:

I, William Walsh, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that John Currie has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was, at the time of taking the annexed, duly authorized to take the same, and that I am well acquainted with the handwriting of said notary public, and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 20th day of Oct., 1876.

[SEAL.] W. WALSH, *Clerk.*

STATE OF MISSOURI, }
County of Worth, } ss:

To any judge, notary public, justice of the peace, or other judicial officer of the State of Illinois, or to any —, Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause to come before you to be examined as witnesses in a cause pending in our circuit court for the county of Worth, in the State of Missouri, wherein Hart C. Fisher, Joseph Jackson, and John C. Terhune are plaintiffs,

102 and Alvin N. Lancaster, Edward Wells, and G. C. Tallman are defendants, all and every such person and at such time and place as shall be named to you for that purpose by the said plaintiffs, their attorneys or agent. And we command you to examine all and every such person upon his oath or solemn affirmation, first made or taken before you, to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties, and that you do take such, his examination, and reduce the same into writing. When you shall have so taken his examination you are to cause the witness to sign the same; and to that and each examination, at the foot thereof, you are to append your certificate, setting forth the facts that the examination was subscribed and sworn to or affirmed by the witness and the day, as well as between what hours of the day, on which it

was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven or referred to by the witness you are to describe the same in his examination or cause it to be so marked by him as to establish its identity, and attach the same to his examination. The examination thus taken you will certify under your hand and seal of office or cause to be accompanied by a certificate of your official character, attested by the seal of the State; or should it be more convenient such authentication and proof of your official character may be made by the certificate and seal of the clerk of any court of record of any county of the State, district, or Territory in which you reside, stating also, in addition to the facts of his being clerk and that the court is one of record, that at the time when the depositions were taken you were an acting judge (or other such officer to whom this commission is addressed), and duly commissioned as such;
103 and you will return the same and all exhibits produced to you, annexed hereto, carefully closed up and under your seal, directed to the clerk of the circuit court in and for Worth county and State of Missouri, with the names of the said parties litigant endorsed thereon, with all convenient speed.

Witness W. H. Campbell, clerk of said circuit court, with the seal thereof hereto affixed. Done at office in Grant City, Mo., this 25th day of February, A. D., 1876.

[SEAL.] W. H. CAMPBELL.
Clerk of Circuit Court.

STATE OF ILLINOIS, }
Cook County, } ss:

The people of the State of Illinois to T. M. Jordan and Alvin N. Lancaster, Greeting:

Whereas I, Edward O. Brown, a notary public in and for the county of Cook and State of Illinois, have been directed by the circuit court of the county of Worth & State of Missouri, to take your depositions in a certain cause now pending undetermined in said circuit court between Hart C. Fisher & Joseph Jackson & John C. Terhune, plaintiffs, and Alvin N. Lancaster, Edward Wells, and George C. Tallman, defendants: Now, therefore, I require you and each of you personally to be and appear before me at the office [of] John P. Altgeld, room thirty-nine (39) in the Reaper Block, ninety-seven (97) Clark street, in Chicago, in the county of Cook and State of Illinois, on the fifth day of July, A. D. 1876, at the hour of ten o'clock in the forenoon of said day, then and there to be examined and to testify the truth in relation to the said matter in controversy, according to the best of your knowledge, on the part and behalf of the said plaintiffs. Hereof fail not, under the penalty of
101 what the law directs.

Given under my hand and notarial seal at Chicago, in said county, this 28th day of June, A. D. 1876.

[SEAL.] EDWARD O. BROWN,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I do certify that I served the within subpœna by reading the same to the within-named Dr. T. M. Jordan, on the 30th day of June, 1876, and by the reading the same to the within-named Alvin N. Lancaster on the 1st day of July, 1876; all done in Cook county, Ill.

A. C. UNDERWOOD,
Constable of Cook County, Ill.

Notice to Take Depositions.

In the Circuit Court of the County of Worth, State of Missouri.

HART C. FISHER, JOSEPH JACKSON, and JOHN C. TERHUNE, Plaintiffs,
against
ALVIN N. LANCASTER, EDWARD WELLS, and GEORGE C. TALLMAN, Defendants

To the above-named defendants and their attorneys:

You are hereby notified that depositions of witnesses, to be read in evidence in the above-entitled cause on the part of the plaintiffs, will be taken at the law office of John P. Altgeld, in room No. 39, Reaper Block, in the city of Chicago, in the county of Cook and State of Illinois, on the fifth day of July, 1876, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, and that the taking of said depositions, if not com-
105 pleted on that day, will be continued from day to day, at the same place and between the same hours, until completed.

JOHNSTON & JACKSON,
Attorneys for Plaintiffs.

Service of the above notice is hereby acknowledged and issue of *dedimus* and all exceptions as to time waived.
June 22nd, 1876.

A. G. LUCAS,
Att'y for G. C. Tallman.

STATE OF MISSOURI, } ss:
County of Worth, }

On this 23rd day of June, A. D. 1876, personally came before me, a notary public within and for this county aforesaid, John H. Pierce, who, being duly sworn, on his oath states: That he served the within notice by posting a copy thereof in the office of the clerk of the circuit court of Worth county aforesaid on this 23rd day of June, A. D. 1876.

JOHN H. PIERCE.

Subscribed and sworn to before me, the day and year first aforesaid. Witness my hand and notarial seal. I qualified as notary public Feb. 14, A. D. 1873, & my term expires Feb. 1st, A. D. 1877.

[SEAL.]

L. J. FARWELL,
Notary Public.

In the Circuit Court of the County of Worth, State of Missouri.

HART C. FISHER, JOSEPH JACKSON, and JOHN C. TERHUNE
against
ALVIN N. LANCASTER, EDWARD WELLS, GEORGE C. TALLMAN,
Defendants.

Depositions of witnesses produced, sworn, and examined on the fifth day of July, A. D. 1876, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the law office of J. P. Altgeld, at room No. 39 in Reaper Block, in the city of Chicago, in the county of Cook and State of Illinois, in a certain cause now pending in the circuit court of Worth county, in the State of Missouri, between Hart C. Fisher, Joseph Jackson, and John C. Terhune, plaintiffs, and Alvin N. Lancaster, Edward Wells, & George C. Tallman, defendants, on the part of the plaintiffs.

Dr. THOMAS M. GORDON, being produced, sworn, and examined, deposeth and saith, in answer to interrogatories, as follows:

Interrogatory 1. What is your name, age, residence, and occupation?

Ans. Thomas M. Jordan; 46; Chicago; grain commission merchant.

Int. 2. What, if anything, do you know of Alvin N. Lancaster conveying to Edward Wells, one of the defendants, certain lands in Worth, Nodaway, & Atchison counties?

Ans. I do remember Mr. Lancaster's conveying certain tracts of land in the county named to Edward L. Wells; I should think about September, 1875.

Int. 3. State, if you please, fully all the circumstances within your knowledge connected with that transaction.

Ans. About the time mentioned I wrote Wells, by the request of Mr. Lancaster, to know if he would raise him, Lancaster, some money, and hold these lands as security for payment; that
107 Mr. Lancaster stated he desired some thirteen hundred or fifteen hundred dollars for ninety days (I think was the time); that if Wells would raise the money for this time he would convey the land direct to him, and if not redeemed at maturity he should sell the land or might keep it (I think were his exact words); Mr. Wells, on receipt of my letter, stated he could raise the money for this length of time, and desired me to have the lands conveyed, and he would send the money immediately, which he did; Mr. Lancaster executed the deed and delivered it to me, and I sent it to Wells, conveying these lands. About the time this note came due Mr. Wells wrote me to see Mr. Lancaster and urge payment, which I did; Mr. Lancaster requested me to tell him to sell the land, I think, naming a Mr. Matteson, of Macomb or Galesburg, as a probable purchaser; Matteson declined to purchase, Wells, in the meantime, urging me to have Lancaster pay the note, as he could not get cash offer for the lands. About this time I either met or communicated with George C. Tallman, one of the defendants, relative to

purchasing these lands; Mr. Tallman said he would pay, I think it was $1,300, the amount that Wells claimed Mr. Lancaster owed him, so I wrote Wells, sending him deeds prepared from him to G. C. Tallman. A few days after this I was at Macomb, where Wells resided; he handed me the deeds, having previously executed them, together with the Lancaster note, which I brought to Chicago, and shortly after Mr. Tallman came on here, paid me this amount of money, & took the deeds.

Int. 4. You may state how long you have known Mr. Tallman.

Ans. About eight years, I think.

Int. 5. Who, if any one, suggested to you that Mr. Tallman might be a possible purchaser of the lands?

108 Ans. I think Mr. Lancaster first suggested it.

Int. 6. About how long before you went to Macomb to see Mr. Wells was this suggestion made by Mr. Lancaster?

Ans. I can't tell what length of time; but I think before the note became due Mr. Lancaster said to me that Wells should have his money promptly; that if he could not sell the lands to Matteson he, Lancaster, thought Tallman would buy them.

Int. 7. Who prepared the deeds that you sent to Mr. Wells to execute to Mr. Tallman?

Ans. I think Mr. Tallman prepared them himself, at least he handed them to me. I could not be positive, however, who filled out the deeds.

Int. 8. State if, before the deeds were delivered to you, you had given Mr. Tallman a description of the lands.

Ans. I think I had. I remember Mr. Tallman writing me, making inquiry if I knew anything as to the title of the lands. In this correspondence the lands were described.

Int. 9. Did you inform him what title Mr. Wells had, and whether or not Mr. Lancaster had owned the lands or examined the title?

Ans. I think that I advised him that I knew nothing of the title to the lands, but had been assured by Mr. Lancaster that the title was good, Lancaster having previously owned the lands.

Int. 10. What, if any, information, did you give Mr. Tallman before the deeds were delivered to you by Mr. Tallman, as to the title and Mr. Lancaster's former ownership of the lands?

Ans. My answer is the same as to the previous interrogatory.

Int. 11. What, if any, information did you give Mr. Tallman, before the sale to him was consummated, as to how Mr. Wells became possessed of the lands?

109 Ans. I do not remember of having said anything to Tallman as to how Wells became possessed of the lands.

Int. 12. I mean by that question to ask whether or not you informed Mr. Tallman that Mr. Wells had obtained title by purchase absolute or as security for a loan of money?

Ans. I do not remember saying anything to Tallman as to how Wells became possessed of the lands.

Int. 13. What other lands, if any, did Mr. Wells convey to Tallman about the same time?

(Objected to by Mr. Loomis, counsel for defendant, Tallman, as immaterial.)

Ans. I think one or two tracts in Michigan were conveyed by Wells at this same time. I could not say who the grantee was, but I think the deed was delivered to Tallman. The grantee's name may have been blank.

(Answer is objected to by Mr. Loomis as immaterial.)

Int. 14. State whether or not the lands situated in Michigan were described in the same deed in which was conveyed the Missouri land.

Ans. No. The Michigan land was in a separate deed.

Int. 15. State whether or not the Michigan lands were included in the sale of the Missouri lands; that is, did the same consideration cover the Michigan lands and also the Missouri lands?

Ans. I do not know as to that.

(Question and answer objected to by Mr. Loomis as immaterial.)

Int. 16. Who delivered to you the deed conveying the Michigan lands before you sent it to Mr. Wells? I understand the deeds were delivered to you and by you sent to Wells.

Ans. I did send the Missouri deeds. I have no recollection of ever having the Michigan deed.

110 Int. 17. State fully all you know in reference to the conveyance of the Michigan lands at that time by Mr. Wells to Mr. Tallman.

(Objected to by Mr. Loomis as immaterial and suggestive.)

Ans. I really have no clear recollection about the Michigan lands; think, however, that Wells mentioned at the time I was in Macomb something about having conveyed or being about to convey this Michigan land.

(Objected to as immaterial and as being hearsay, by Mr. Loomis.)

Int. 18. State whether you received the deed conveying the Michigan lands from Mr. Wells at the same time you received the deed conveying the Missouri lands from Mr. Wells to Mr. Tallman?

Ans. I cannot remember that I did receive the Michigan deed at all. It is possible that it was among the other deeds.

Int. 19. What, if anything, did you hear Mr. Tallman say about Mr. Lancaster's having agreed to redeem the lands from him, Tallman?

Ans. I have no recollection of hearing Mr. Tallman say anything about any such arrangement.

Int. 20. You may state whether or not you saw Mr. Lancaster & Mr. Tallman together at the time Mr. Tallman came to Chicago during the negotiations between Mr. Tallman & yourself about those Missouri lands.

(Objected to by Mr. Loomis as argumentative & suggestive.)

Ans. I saw them together frequently during the time Mr. Tallman

was in the city, but Lancaster was not with Tallman during the time we were negotiating those lands, nor when he, Tallman, paid me the money and received his deeds.

111 Int. 21. What, if anything, do you know of some of the deeds which you received from Mr. Wells being sent back to him to be reacknowledged & returned?

(Objected to by Mr. Loomis as being too general and vague.)

Ans. I think there was one deed sent back to Wells for reacknowledgment. I can't remember whether I sent it or not. I recollect writing Wells something about it. It was mentioned to me that the acknowledgment of the wife of Wells was defective.

Int. 22. Who mentioned the defect in that deed to you?

Ans. I think it was Tallman. I think Tallman wrote me on the subject.

Int. 23. What lands were conveyed in the deeds the reacknowledgment to which was defective?

Ans. I do not know whether it was some of the Missouri lands or the Michigan lands.

Int. 24. State whether or not it was the same deed you had received or had in your possession before.

Ans. I do not know.

Int. 25. You may state if you corresponded with Mr. Tallman before the sale of land was consummated.

Ans. I think I did not, as I have just now looked at my letter-book and find no letters to him.

Int. 26. How many times and where did you meet Mr. Tallman during the negotiations about the lands?

Ans. Two or three times, certainly, at my office, 155 La Salle street, Chicago.

Int. 27. State as near as you can when the sale was finally consummated.

Ans. By reference to my letter-book I find that I remitted the
112 proceeds of the sale to Mr. Wells on the 20th of January, 1676. The money was paid me and the deeds delivered to Tallman on this day or a day or two previous.

Int. 28. State whether or not the amount you received from Mr. Tallman was the exact amount of principal and interest due on the Lancaster note to that date?

(Objected to as leading by Mr. Loomis.)

Ans. Yes, it was; including some expense of recording deeds & examining titles that Wells had paid out.

Int. 29. When did you and Mr. Tallman first agree on the amount that Tallman should pay for the land?

Ans. I think about the first of January, as near as I can fix it, possibly December previous.

Int. 30. Where did you make that agreement?

Ans. Here in the city, in my office.

Int. 31. State whether or not the sum you received, on or about

the 20th of January, was the same you and Mr. Tallman agreed on about the 1st of January or December previous.

Ans. It was.

Int. 32. You may state whether or not the note was mentioned, and the amount due upon it during your interviews with Mr. Tallman.

(Objected to by Mr. Loomis as leading.)

Ans. It was, and I think that I stated in round numbers that it would not exceed ($1,400) fourteen hundred dollars.

I did not know just then what additional expense Wells had been to.

Int. 33. State whether or not the note was shown to Mr. Tallman during your negotiations.

Ans. I do not remember that it was.

Int. 34. State whether or not the note was produced and the interest computed in your office on the day the deeds were
113 delivered, and the money paid.

(Objected to, as leading and fishing in its character, by Mr. Loomis.)

Ans. I can't show that the note was shown to Mr. Tallman, but I had the note in my office, and then and there reckoned the interest, and told Mr. Tallman the amount.

Int. 35. State what, if anything, you informed Mr. Tallman about those Missouri lands being held for the payment of the note with interest.

(Objected to by Mr. Loomis, as leading and suggestive.)

Ans. I do not remember that anything was said further than that Wells had authorized me to deliver up the deeds on payment of this amount of money, some thirteen hundred and fifty dollars.

Int. 36. In that statement to Mr. Tallman what specific sum of money, if any, was mentioned?

Ans. I think about thirteen hundred and fifty dollars.

Int. 37. What particular sum of money was mentioned on your first interview with Mr. Tallman as Mr. Wells' price for the land?

Ans. I stated to Tallman that Wells was determined to sell the land, and would do so to make himself whole, which would not exceed fourteen hundred dollars.

Int. 38. How long was it after the deeds were delivered to Mr. Tallman that you disposed of the note that Mr. Wells gave you, and what did you do with it?

Ans. I think, within a day or two, I handed the note to Mr. Lancaster.

Int. 39. What, if you know, were these lands reasonably worth at the time they were purchased by Mr. Tallman?

Ans. I do not know anything as to the value of the lands.

Int. 40. What were the lands represented to Mr. Tallman
114 to be worth at that time, if you know?

(Objected to by Mr. Loomis, as immaterial.)

Ans. I do not think I made any representation to Tallman as to the value of the lands, he being familiar with the county, while I was not.

And in answer to cross-interrogatories by Mr. LOOMIS, counsel for defendant, George C. Tallman, he saith:

Cross-int. 1. In whose interest were you operating in the transactions you have mentioned?

Ans. In the interest of E. L. Wells.

C.-int. 2. At the time of the conveyance of these Missouri lands by Lancaster to Wells, in September, 1875, and prior thereto, was Lancaster indebted to Wells; if so, in what amount, and what effort had been made by Wells to obtain payment?

Ans. For two years, as near as I can remember, previous, Lancaster was owing Wells some five or six hundred dollars that he had been urging Mr. Lancaster to pay. About this September Lancaster suggested to me that if Wells could borrow thirteen to fifteen hundred dollars he would convey those lands direct to Wells as security, Wells should keep out his pay for the money already due him and let him, Lancaster, have the balance.

Cross-int. 3. Was it on this suggestion that Wells raised the sum of thirteen hundred dollars, already mentioned, and received a conveyance of these Missouri lands from Lancaster?

Ans. I think it was.

Cross-int. 4. What time, if any, did Lancaster have to repay the money and obtain a reconveyance of the lands?

Ans. Ninety days.

Cross-int. 5. Was the deed to Wells to become absolute on
115 failure of such payment according to Lancaster's own statement and agreement?

Ans. It was.

Cross-int. 6. Did he pay this money or any part thereof within said ninety days, directly or indirectly?

Ans. He did not that I know of.

Cross-int. 7. In this transaction between Wells & Lancaster, did Wells or did you, acting for him, conduct said negotiations or obtain said conveyance for the purpose of protecting Lancaster, or preventing his creditors from reaching his property in any way, shape, or manner?

Ans. No, sir.

Cross-int. 8. Where does this George C. Tallman, of whom you speak, reside, and where has he resided for the last eight years?

Ans. In Brooklyn, New York.

Cross-int. 9. What is his business and how extensively is he engaged therein?

Ans. He operates very largely in western lands, principally wild lands, some city real estate, and shaves paper.

Cross-int. 10. You speak in your examination-in-chief about Mr. Lancaster's having suggested the name of Mr. Matteson, of Macomb, as a possible purchaser, and also the name of George C. Tallman. Was this not before the ninety days had expired, and while Lan-

caster still had an equitable interest in said lands under his agreement with Wells?

Ans. Yes; it was.

Cross-int. 11. Did you see Tallman or conduct any negotiation with him before Lancaster's interest in said lands under said agreement had expired?

Ans. I don't think I did.

Cross-int. 12. So far as your knowledge extends, did Tall-
116 man, at the time he purchased said lands, know or have reason to believe that Lancaster had any interest whatever therein?

Ans. Not that I know of.

Cross-int. 13. Did you tell him, or do you know of anyone else telling him, or did he mention the fact in your hearing, at or before said purchase, that Lancaster had any agreement with Wells as to the redemption or reconveyance of said lands?

Ans. I did not tell him and have no knowledge of any one telling him anything of the kind, nor did he mention it to me.

Cross-int. 14. Why was the amount of this note of Lancaster's mentioned by you to Tallman? What led to that?

Ans. For the reason that Wells wrote me he was determined to sell the land, and would do so if he could not get any more than what was coming to him. He also stated that he had tried to sell the lands to Matteson and some other parties, but could not get cash offer for them.

Cross-int. 15. Then it is not true that you simply told Tallman that Wells would sell him the land for just what it cost him, without stating to him the nature of the transaction between Lancaster and Wells?

Ans. There was nothing said between Tallman and me as to [the] Lancaster and Wells transaction, but I stated to him substantially that we would sell him the lands — about fourteen hundred dollars.

Cross-int. 16. Is it not true that Tallman knew nothing about you or Wells having Lancaster's note at the time of the negotiation & purchase of said land by him?

Ans. I do not know what his knowledge may have been. There was nothing said between him and me as to the matter between Wells and Lancaster.

117 Cross-int. 17. Was Mr. Tallman, in effecting said purchase, acting in the interest of Lancaster in any shape, way, or manner, either directly or indirectly, so far as your knowledge extends?

Ans. Not that I know of.

Cross-int. 18. Was there any arrangement or understanding between Tallman & Lancaster, so far as you know, by which Lancaster was to retain any interest or right of redemption in said lands?

Ans. I do not know of any.

Cross-int. 19. Was not the purchase by Tallman of said lands concluded, and the deed given for the same from Wells, some time about the 5th day of January, 1875?

Ans. I think the deed was executed and delivered to me about

that time. I called upon Judge Wood, who represented Mr. Tallman, on my return to the city, about the 10th to the 12th of January, as my understanding of the arrangement was that Judge Wood should give me a draft on Mr. Tallman for the money, and I should deliver the deeds to Judge Wood; as I had no abstract of title accompany the deeds the judge declined to take the deed and pay the money until an abstract should be furnished, or Mr. Tallman should come on in person. I wrote to the different counties for abstracts immediately. Before they were received Mr. Tallman came on and completed the matter by paying me and receiving the deeds, which must have been from the 18th to the 20 of January, as my books seem to show. Mr. Tallman was here first about the last of December or the first of January. He went on, as I remember, to Michigan, and was gone two or three weeks, returning about the 18th or 20th of January, as I now remember.

In answer to redirect interrogatories he saith:

118 Redirect int. 1. About what time did Mr. Tallman come here when the sale of these lands was mentioned to him?

Question withdrawn.

About how long was it, after Lancaster suggested to you that Tallman might be a purchaser of these lands, that you first suggested to Tallman buying them?

(Objected to by Mr. Loomis as not rebuttal.)

Ans. Well, I can't remember the length of time. Probably within a month, as near as I could fix it at all.

Redirect int. two. About how long was it from the time you first suggested the sale of the lands to Tallman until the price was agreed on between you and Tallman?

(Objected to as not rebutting by Mr. Loomis, as having been gone over in examination-in-chief.)

Ans. Well, I should say within two or three days. My recollection now is that Mr. Tallman was only here three or four days at that time, and I, perhaps, met him every day during the time he was in the city.

And in answer to recross-interrogatories he saith:

Recross-int. 1. Was not the time at which you first suggested the purchase of said lands to Tallman, and the time when the price was agreed on, subsequent to the maturity of the Lancaster note, and after the title to the said lands had become vested absolutely in Wells?

Ans. It was after the note had become due.

Subscribed and sworn to before me, Edward O. Brown, notary public for Cook county, in the State of Illinois, on the day, at the place, and within the hours first above mentioned.

[SEAL.] EDWARD O. BROWN,
Notary Public.

119 The hour of six having arrived, and the notary not being able to complete the taking of these depositions, the same is adjourned to the sixth day of July, when it will be continued at the same place, and between the same hours, as above.

EDWARD O. BROWN,
Notary Public.

Pursuant to the foregoing adjournment the further taking of the depositions in the above-entitled cause is continued on the 6th day of July, 1876, at the same place and between the same hours.

EDWARD O. BROWN,
Notary Public.

ALVIN N. LANCASTER, being duly sworn, in answer to interrogatories, deposes and says as follows:

Int. 1. What is your name, age, place of residence, and occupation?

Ans. Alvin N. Lancaster; forty-four years; Hyde Park, Cook county, Illinois; have now no business.

Int. 2. Are you one of the defendants in this cause?

Ans. Yes.

Int. 3. What lands, if any, did you convey to your codefendant, Edward Wells, about the 16th day of September, 1875?

Ans. As to the date of the conveyance I cannot fix that exactly. 160 acres in sec. 17, and 240 in section 15, township sixty-six (66), I think—ranges 32 or 33 or both—in Worth county, Missouri, and 160 acres in section 12, Nodaway county; I can't tell the township. Northwest of Maryville about eighteen miles, I think; and 120 acres in Atchison county, near the northeast corner of the county, in section 34.

Int. 4. What contract, if any, was made between yourself
120 and said Wells, with reference to the reconveyance of such lands to you; and if such agreement was made, was it a parol or written agreement?

Ans. With Wells direct, no contract. I did not see Wells personally in the transaction. I stated to Dr. Jordan if he could procure from Wells the sum of money I wanted, about thirteen hundred dollars, I would convey these lands to Wells absolute, but that he should give me the privilege of paying it in ninety days; otherwise, he might sell it as he pleased. That was about the substance of it. He might sell it or hold it. The agreement was not in writing.

Int. 5. What other instrument in writing, if any, did you execute and deliver to said Wells at the time you executed the deed or deeds conveying said lands?

Ans. I executed a note to Wells, payable in ninety days, for thirteen hundred dollars. My recollection is that it did not bear interest, and that if there was interest it was calculated on the face of the note. I don't remember whether it bore interest after maturity.

Int. 6. What disposition, if any, did Mr. Wells make of those lands?

Ans. Of my own knowledge I know nothing. I am informed that

he sold them to George C. Tallman; I have not seen or communicated with Wells; I wrote him once, but he never answered me.

Int. 7. State, if you know, who prepared the deeds which Mr. Wells executed to Mr. Tallman?

Ans. I do not know.

Int. 8. What other lands, if any, did Mr. Wells convey to Mr. Tallman about that time?

(Objected to by Mr. Loomis, as immaterial.)

Ans. I think Mr. Tallman received from him a deed of lands in Michigan. Mr. Tallman requested me if I could to get from Wells a deed of a tract of land in Michigan, which Tallman
121 had previously conveyed to Wells. I asked Dr. Jordan if he could get it. This was about two weeks after the transaction in relation to the Missouri lands.

Int. 9. Who conveyed or caused such other lands to be conveyed to said Wells?

Ans. Mr. Tallman conveyed the lands to Wells, I understand. I have no knowledge about the matter.

Int. 10. Have you not for some five or six years past occasionally caused lands to be deeded to said Wells and to M. F. Miller and to said G. C. Tallman and to E. P. Sampson, or some of those gentlemen, without their knowledge; and, if so, state to which one you have caused lands to be conveyed?

(Objected to as immaterial and as being too general and vague.)

Ans. I conveyed two tracts in Iowa to Edward L. Wells to secure money borrowed for me at the bank in Macomb, & that is the only land besides this I know of conveying to him. To Mr. Sampson I conveyed one tract of land, I think, in Missouri, to secure him for becoming security for me in a small suit. After the suit he reconveyed it, I think, to Geo. C. Tallman & to M. F. Miller; I have sold, I think, one hundred thousand acres, but never an acre without their knowledge.

Int. 11. Was the name of the grantee left blank in the deed or deeds executed by the said Wells, in which was conveyed the Michigan lands; and, if so, whose name was afterwards inserted in such deed, and at whose request was the name of such grantee afterwards written in such deed or deeds?

(Objected to as immaterial.)

Ans. I don't know that I ever saw those deeds. I couldn't answer. I don't know.

122 Int. 12. What consideration or obligation, if any, did you receive from said Tallman for the Michigan lands so conveyed to Mr. Tallman by Mr. Wells?

Ans. Nothing whatever.

Int. 13. Did you about the time Mr. Tallman obtained the deeds from Mr. Wells convey or cause to be conveyed to said Tallman, directly or otherwise, any other lands, and what consideration did

you receive therefor, and what agreement, if any, did you make with said Tallman about the future disposition of such lands?

Ans. I conveyed no lands to Tallman at that time, nor for a year before. I have no recollection of conveying him any lands about that time.

Int. 14. How long have you known Mr. Tallman; have you had transactions with him during that time in Missouri or Iowa lands; and have you conveyed western lands to him; if so, state about what year you first began to deal with him about such lands?

Ans. I have known Mr. Tallman about fifteen years. I have had very many transactions with him in Iowa lands. I am not aware I have had any in Missouri lands. I have conveyed many thousand acres of western lands to him. I first commenced to deal with him about such lands from ten to fifteen years ago—I cannot fix the exact year.

Int. 15. Did you meet Mr. Tallman in the city of Chicago about the time he obtained the deeds from Mr. Wells; and, if so, state how many times, and at what place of business you met him?

Ans. During the month of January, I should think, I met him fifty times, principally at Judge Wood's office, frequently at the hotel.

123 Int. 16. Did you at any of those meetings have any conversation with Mr. Tallman about those lands, either as to the title value or location of the lands; if so, state fully all that was said?

Ans. I should think on at least two occasions; I can't give you exact; it might have been made the question of those lands was raised. As I recollect the substance of the conversation was as to the title, asking me if I had an abstract; I gave him a general history of the title as to patent, taxes, &c. I told him that the lands were entered, except the Atchison county, by Leo Tarlton; conveyed by Tarlton to Halsey, Halsey to me, and sold by me to Miller or Lamb, or both; repurchased by me; that I had purchased the tax titles upon all except a small part of the Nodaway tract; that that I did not consider of any value, (I mean the tax claim on it); that the tract in Atchison had formerly been owned by Josiah L. Lombard & myself, and was considered perfect in title; and that all the lands sold by me to Wells were free from incumbrance except as to small matter of taxes. He informed me that he had bought the lands but wanted to be satisfied more about the title

Int 17. At which of these conversations did he inform you that he had bought the lands?

Ans. At the first.

Int. 18. You may state, if you please, about what time in the month of January you had the first conversation about these lands with Mr. Tallman?

Ans. About the 15th or 16th, I should think.

Int. 19. Do you know of Mr. Tallman's having gone from Chicago to Wisconsin about that time; and, if so, was it before or after your first interview in Chicago with Mr. Tallman?

Ans. Mr. Tallman told me he had been to Wisconsin to look after

stores, and I think that it was prior to my interview with
124 him.

Int. 20. State, if you know, whether or not Mr. Tallman had an attorney or agent in the city of Chicago to attend to the business with Mr. Wells for him; if so, state who such attorney or agent was, and if you at any time had any conversation with such agent or attorney about such lands, the value, location, title, and your former ownership, and how you disposed of the lands to Mr. Wells; state fully what you said to such agent or attorney.

Ans. Yes, he had an attorney, Charles H. Wood, who had to do with this transaction; I don't recollect having anything to say to Judge Wood, but it was in Judge Wood's office that the conversation with Mr. Tallman above referred to took place; I no not know whether Judge Wood was present or not; I often met Mr. Tallman at Judge Wood's office.

Int. 21. Have you not, both before and since the conveyance by Mr. Wells and yourself to Mr. Tallman, been the agent of Mr. Tallman for the sale and disposition of his Missouri and Iowa lands, or some of them?

Ans. I have acted as Mr. Tallman's agent for selling lands for ten or more years, and am his agent to-day, if I wish to do anything.

Int. 22. In the sale of lands for Mr. Tallman do you act under instructions as to prices, or do you find purchasers and afterwards confer with Mr. Tallman as to prices?

Ans. I act in both ways; where a general average value is understood I act independent, and in other cases submit offers.

Int. 23. What were the lands conveyed to Mr. Wells by you worth at the time Mr. Wells conveyed them to Mr. Tallman?

Ans. I should say that was much a matter of opinion; I
125 can say this: I tried to sell them for $3,000 to parties in Missouri in December before; they did not take them.

Int. 24. State what is your opinion as to the value of the lands at time.

(Objected to, as immaterial, and that there is no evidence that the witness is an expert as to such values.)

Ans. They were worth just what they would bring cash; that is the only basis any human being can place value of lands on for the last three years in America.

(The notary is requested to repeat the question.)

Question repeated.

(Objected to as above.)

Ans. In my humble or exalted opinion they were worth what they would sell for cash, they being offered by me generally for $3,000 and not selling.

Int. 25. Have you now, or have you at any time since the conveyance by Mr. Wells to Tallman, had an opinion as to the value of those lands conveyed by Mr. Wells; since that conveyance, or, in

your opinion, were those lands worth as much at the time of that conveyance as they have been at any time since then?

(Objected to by Mr. Loomis on the ground that it is immaterial what the value of the lands has been since the conveyance to Mr. Tallman.)

Ans. I have formed no opinion, from the fact that I do not think any property of that kind will sell for cash; if there were buyers the lands would be more saleable in the spring than in the fall; that is the only reason that I could understand for a difference in value.

Int. 26. You may state whether or not you were embarrassed financially about the time of this sale by Mr. Wells to Mr. Tallman?

126 (Objected to by Mr. Loomis as immaterial.)

Ans. Yes; I was—as I was when I sold to Wells.

Int. 27. You may state whether or not there are now judgments for large amounts against you unsatisfied.

(Objected to as immaterial.)

Ans. There are some fourteen or fifteen thousand dollars of judgments against me.

Int. 28. Have you property at this time out of which these judgments could be collected?

(Objected to as immaterial & prying in its character.)

Ans. The property I have is in the hands of a receiver, surreptitiously obtained on a creditor's bill connected with the judgments referred to as appointed by the United States circuit court in this district.

Int. 29. How long since the suits were instituted in which the judgments mentioned were entered?

(Objected to as secondary evidence, the record being best evidence, and also as being immaterial.)

Ans. I couldn't give the dates; I should think over a year.

Int. 30. Have you at any time since the institution of those suits had sufficient property in your own right to satisfy your liabilities?

(Objected to as immaterial, inquisitive, and impertinent.)

Ans. That becomes a matter of opinion. If the property could be sold at the price such property was sold at four years ago, yes. As it is now there are no sales. I do not know. I cannot say whether the property in my own right would sell for enough to pay my liabilities.

Int. 31. How long since the receiver was appointed?

127 (Objected to because the record is the best evidence.)

Ans. I think in February in this year. It might have been March.

Int. 32. State whether or not you are related in any way to either Dr. Jordan or George C. Tallman or Edward L. Wells?

Ans. I am not in any way whatever.

In answer to cross-interrogatories by Mr. LOOMIS he answers as follows, deposes and says:

Cross-int. 1. How came you to propose to Wells through Dr. Jordan the Missouri lands in question?

Ans. I was at that time negotiating upon other property loan fifty thousand dollars, but required two quit-claims, one of dower and one of another interest, to perfect the title, and wanted money for that purpose. I wanted from $700 to $1,000, but owed Mr. Wells, I think, $600 at that time.

Cross-int. 2. Was it then for the purpose of paying Wells what you owed him and of raising money to obtain these quit-claim deeds that you desired and obtained the $1,300 from Wells of which you have spoken?

Ans. It was.

Cross-int. 3. Was it a matter of friendship that Wells let you have this money or strictly a business transaction?

Ans. Purely a matter of dollars and cents. No friendship in the matter.

Cross-int. 4. What length of time, if any, did you have under your agreement with Wells to repay the loan and obtain a reconveyance of the land?

Ans. Ninety days.

Cross-int. 5. If the money was not paid in that time what interest, if any, were you to have in the land after that?

Ans. None whatever.

Cross-int. 6. Was that distinctly understood and agreed to
128 by you at the time.

Ans. It was; it was the only condition on which I could get the money.

Cross-int. 7. Was the money, or any portion of it, paid to Wells, or to any one for him, during said ninety days?

Ans. No; no part of it.

Cross-int. 8. In this transaction with Wells was there any understanding, express or implied, between you and Wells or Dr. Jordon, that this conveyance to Wells was to be for your benefit or to protect your property from your creditors, or for any other purpose than that of obtaining money as aforesaid?

Ans. None whatever; for had I obtained the loan I could have settled with all my creditors. I mean the fifty thousand dollar loan.

Cross-int. 9. Did you attempt to sell these lands during the said ninety days in order to obtain the money to repay Wells?

Ans. I did. I offered the lands to parties in the counties where they were located and also to other parties, stating to each one that the money must be paid on or before a certain date; but I was unsuccessful.

Cross-int. 10. State whether or not you received an offer for said lands after the ninety days had expired; and, if so, what, if anything, you did with such offer.

Ans. I received propositions to buy two of the tracts; one I sent

to Mr. Wells and one to Mr. Tallman. I don't recollect the date of the propositions. I received no reply from either of them.

—. Why did you send them to Wells & Tallman?

129 Ans. Because I considered them the parties in interest.

Cross-int. 11. Did you have any interview or correspondence with Tallman regarding these Missouri lands before he negotiated with Wells through Dr. Jordan for the purchase of the same?

Ans. I offered them to Mr. Tallman in November or December, 1875, personally, at his house, for $3,000. He refused to take them; declined to purchase.

Cross-int. 12. Did you have any interview or correspondence with Tallman, with regard to his purchasing said lands from Wells, prior to his negotiations with Wells for the same?

Ans. No.

Cross-int. 13. Did Tallman purchase these lands in your interest, directly or indirectly?

Ans. Not in the least.

Cross-int. 14. Was there any understanding between you and Tallman, or any one for him, either directly or indirectly, secret or open, that you were to have any interest in said lands or any reconveyance of the same, in any way, shape, or manner?

Ans. No; none.

Cross-int. 15. Did Tallman pay the money to Wells, or to Dr. Jordan for Wells, for the purpose of taking up your note or to benefit you in any way?

Ans. No. I don't think he ever knew there was a note; I never mentioned it.

Cross-int. 16. Did you ever, before Tallman's purchase of said lands from Wells, inform him in any way of the arrangement or agreement that had formerly subsisted between you and Wells as to these lands?

130 Ans. No.

Cross-int. 17. Did he know of such arrangement or agreement, so far as your knowledge extends?

[Ans.] Not to my knowledge.

Cross-int. 18. Then, when you answered his inquiries as to the title of said land did you not answer him in the same manner that you would other persons making the same inquiries?

Ans. Exactly.

Cross-int. 19. Did you have any reason to believe at that time, from his statements or otherwise, that you then had any interest in said lands?

Ans. No.

Cross-int. 20. You say, in answer to a former interrogatory, that you have acted as agent for Tallman before and since his purchase of said lands; in what way and how were you compensated?

Ans. By five per cent. commission on all the lands I should sell for him.

Cross-int. 21. Did you receive any other or further compensation or interest in lands sold by you for him?

Ans. None at all.

Cross-Int. 22. Have you now or have you had since the expiration of the ninety days' time in which, by your agreement with Wells, you might have redeemed said land, any interest therein?

Ans. No.

Cross-int. 23. How largely does George C. Tallman operate in Western lands; what is his financial condition, so far as you know?

Ans. He is the largest operator I know in America; I should think he was worth at least three millions.

131 Cross-int. 24. What connection, if anything, had you with the conveyance of the Michigan lands spoken of from Wells to Tallman?

Ans. Nothing more than as I have stated in my answer to interrogatory-in-chief, carrying request to Dr. Jordan.

In answer to redirect interrogatories he deposes and says as follows:

Redirect int. 1. What did you state to Mr. Wells and to Mr. Tallman with reference to the propositions made to you for some of the Missouri lands and mentioned in your cross-examination?

Ans. I don't think I have any copies of the letters; I transmitted the same offers, & with comments; one was from a party near Rock Port, Missouri; Mr. J. P. Lewis, I think, and the other from a party in Worth county; I don't remember the post office or the names; it was a farmer, I think.

Redirect int. 2. What offers, if any, did either of the parties make for the lands?

Ans. I do not remember; Mr. Lewis made an offer, I think; I do not remember what it was.

Redirect int. 3. To whom did you send the offer made by Mr. Lewis?

Ans. To Mr. Tallman.

—. What lands in Worth county did the other person apply to purchase, and to whom did you send his proposition?

Ans. I do not remember the tract; I sent the proposition to Mr. Wells.

Redirect int. 4. What other proposition, if any, did you receive for those lands or any of them?

Ans. I don't remember any others; my impression is that these two are all I received.

132 And in answer to recross interrogatories he answers and deposes and says as follows:

Recross-int. 1. Had you any other motive in sending the abovementioned offer and proposition to Tallman and Wells, respectively, than to obtain, if possible, a commission for the sale of said land, if effected?

Ans. None, except it might be courtesy due the parties making offers.

ALVIN N. LANCASTER.

Subscribed and sworn to before me, Edward O. Brown, notary

public for Cook county, in the State of Illinois, on the sixth day of July, 1876, at which time the taking of said depositions was adjourned from the fifth day of July, 1876, at the place and within the hours first above-mentioned.

[SEAL.] EDWARD O. BROWN,
Notary Public.

STATE OF ILLINOIS, } ss :
County of Cook, }

I, Edward O. Brown, a notary public in and for said county, do certify that in pursuance of the annexed notice and commission came before me, at the law office of John P. Altgeld, at room No. 39, Reaper Block, in the city of Chicago, in the county and State last aforesaid, Thomas M. Jordan and Alvin N. Lancaster, who were by me duly sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined and their examination was reduced to writing and subscribed by them on the day, at the place, and within the hours in that behalf first aforesaid, and their said depositions are now herewith returned, and I certify that said Thomas M. Jordan and Alvin N. Lan-
133 caster are residents of said city of Chicago. I further certify attorneys for the plaintiffs and an attorney for the defendant, George C. Tallman, were present and appeared at said examination.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal, at the city, county, and State aforesaid, this 6th day of July, A. D. 1876.

[SEAL.] EDWARD O. BROWN,
Notary Public.

Opinion of the Court.

Supreme Court Mo. Oct. Term, 1881.

FISHER, JACKSON & CO. *vs.* LANCASTER *et al.*

The only question which we deem it important to decide in this case is, whether an attaching creditor can maintain a suit to redeem land which has been attached from a mortgage executed by the defendant in the attachment suit.

The general rule is, that as an ordinary creditor, before judgment and execution, has no certain claim upon the property of his debtor, he has no concern with conveyances of any kind affecting such property.

Martin *vs.* Michael, 23 Mo., 50.
Turner *vs.* Adams, 46 Mo., 95.
Pendleton *vs.* Perkins, 49 Mo., 565.
Story's Eq., section 1023.

After the decision of this court in Martin *vs.* Michael, *supra*, a change was made in the law by the act of January 14th, 1860, which has continued in force ever since and is now found in section 448, Rev. Stat., whereby any attaching creditor may maintain an action

for the purpose of setting aside any fraudulent conveyance,
134 assignment, change, lien, or incumbrance of or upon any property attached in any action instituted by him.

This statute, however, is not broad enough to cover the case we are now considering. In the absence of statutory provisions on the subject the party seeking to redeem from a mortgage must not only have a *jus ad rem, but a jus in re.*

We are aware that it has been held, in the case of Chandler *vs.* Dyer, 37 Vt., 345, that an attaching creditor may redeem, but we are not satisfied with the reasoning in that case.

If an attaching creditor has such an interest in land as will warrant the courts in permitting him to come in and redeem, it must necessarily follow that he is a proper party to a bill of foreclosure; that he is not considered in this state a proper party to a bill of foreclosure is evident from the langugage of our statute, providing who may be made parties.

That statute limits the right of coming in to persons claiming an interest in the mortgaged property, nor is it at all necessary for the protection of the interests of an attaching creditor that he should have the right to file a bill to redeem. This attachment binds the interest of the mortgagor, and in the event of a sale under the mortgage before the attaching creditor can have judgment and execution the proceeds of the sale, after satisfying the mortgage, will be subject under the attachment to the payment of his demand.

On the other hand great inconvenience and sometimes oppression might result from permitting a person to redeem who may ultimately be shown to be not even a general creditor of the mortgagor.

The plaintiffs' suit to redeem having been prematurely instigated, the judgment of the circuit court, which was in their
135 favor, will be reversed. The other judges concur.

WARWICK HOUGH.

STATE OF MISSOURI, *sct:*

I, Henry W. Ewing, clerk of the supreme court of Missouri, do hereby certify that the foregoing is a true copy of the opinion of said court, delivered in the foregoing-entitled cause on the 28th day of November, 1881, as fully as the same appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said supreme court. Done at office in the city of Jefferson, State aforesaid, this 8 day of December, 1881.

[SEAL.] HENRY W. EWING, *Clerk.*
By E. B. EWING, *D. C.*

And afterwards, at said term, on the 14th day of December, A. D. 1882, the following proceedings were entered, to wit:

136 JOSEPH JACKSON *et al.*
against
FREDERICK H. LAWRENCE *et al.* } 500.

This day come the complainants, by their solicitors, and present to the court a bond for appeal in the above cause, and pray the court

to approve the same; and thereupon said bond is approved, and the appeal herein prayed is by the court allowed.

Said bond for appeal is in words and figures as follows, to wit:

We, Joseph Jackson and John C. Terhune, as principals, and ——— and ———, as securities, are held and firmly bound unto Frederick H. Lawrence, Mary L. Lawrence, Edward A. Tallman, Henry Tallman, Julia P. Tallman, Eliza S. Lachemeyer, and — Lachemeyer, her husband; Rebecca W. Boardman and — Boardman, her husband, in the penal sum of five hundred dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. The condition of the above bond is such that whereas the above-bounden Joseph Jackson and John C. Terhune have taken an appeal from the decree of the circuit court of the United States, of the western division, of the western district of Missouri, at its October term, 1882, in a cause pending therein, wherein the said Joseph Jackson and John C. Terhune are complainants, and the above-named obligees are respondents.

Now, if the above-named complainants and appellants herein shall prosecute this appeal to effect, and if they fail to make their plea good, shall answer all damages and costs, then this bond to 137 be void; otherwise, to remain in full force in virtue.

In testimony whereof, we have hereunto set our hands and seals, this 12th —, A. D. 1882.

JOS. JACKSON. [SEAL.]
JOHN C. TERHUNE. [SEAL.]
E. M. PERDEW. [SEAL.]
W. W. NEWLON. [SEAL.]

UNITED STATES OF AMERICA, *set:*

I, Henry C. Geisberg, clerk of the circuit court of the United States for the western division of the western district of Missouri, do hereby certify that the foregoing is a true, full, and complete transcript of the record in the cause therein named, as fully as the same appears in my office.

Witness my hand as clerk, and the seal of said court. Done at office in Kansas City, Missouri, this 30th day of December, A. D. 1882.

(Seal of the United States Circuit Court, Western Division, for the Western District of Missouri.)

H. C. GEISBERG, *Clerk*,
By WARREN WATSON, *D.C.*

Endorsed on cover: W. Missouri, C. C. U. S. No. 205. Joseph Jackson and John C. Terhune, appellants, *vs.* Frederick H. Lawrence, Mary L. Lawrence, Edward A. Tallman, Henry Tallman, *et al.* Filed 19th March, 1883.

117679

SUPREME COURT U. S.
FILED.
OCT 26 1885
JAMES H. McKENNEY.
CLERK.

No. 205.

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1885.

JOSEPH JACKSON AND
JOHN C. TERHUNE,
Appellants,
vs.
FREDERICK H. LAURENCE
MARY L LAURENCE,
EDWARD A TALLMAN,
HENRY TALLMAN, ET. AL.,

Appeal from the Circuit Court of the United States for the Western District of Missouri.

T. J. JOHNSTON.
H. M. JACKSON,
Attys. for Appellants.
A. S. EVEREST, of Counsel.

Haskell & Son, Printers and Binders, Atchison, Kan.

No. 205.

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1885.

JOSEPH JACKSON AND
JOHN C. TERHUNE,
Appellants,
vs.
FREDERICK H. LAURENCE
MARY L. LAURENCE,
EDWARD A. TALLMAN,
HENRY TALLMAN, ET. AL.,

Appeal from the Circuit Court of the United States for the Western District of Missouri.

Appellants respectfully submit the following:

STATEMENT OF CASE.

Appellants, as purchasers of lands situated in the counties of Worth, Nodaway and Atchison, in the State of Missouri, and which they had purchased at execution sale

under a judgment against one Alvin N. Lancaster filed their bill in equity in the Circuit Court of Worth County, Missouri, to redeem said lands from defendants as devisees of one George C. Tallman, who, in his lifetime, held a title, fee simple absolute in form, to all said lands, but which title was in equity a mortgage; such title having been made by deed absolute in form, executed by said Alvin N. Lancaster to one Edward Wells, to secure a loan of money obtained from said Wells, and also other indebtedness of said Lancaster to said Wells, for which a note was given by Lancaster to Wells with a parol agreement that upon the payment of said note at maturity, said Edward Wells would re-convey said lands to said Lancaster.

The loan was made, note given, deed executed, and agreement made to re-convey on payment of the debt, at the same time, viz: September 16th, 1875.

The note was for $1,300, due in ninety days. The deeds conveyed the following described real property in the State of Missouri.

In Worth County the

N. W. ¼, section 17, township 66, range 32.

N. E. ½, section 15, township 66, range 33.

E. ½, N. W. ½, section 15, township 66, range 33.

In Nodaway County

E. ½, S. E. ½, section 12, township 65, range 38.

S. W. ¼, S. E. ¼, section 12, township 65, range 38.

N. E. ½, S. W. ¼, section 12, township 65, range 38,

And in Atchison County the

W. ½, N. E. ¼, section 34, township 66, range 39.

N. E. ¼, N. E. ¼, section 34, township 66, range 39.

Edward L. Wells executed deeds of release and quit claim in form to Geo. C. Tallman of date January 5th, 1876, but the deeds were not delivered until January 20th, 1876, the consideration being the amount of Lancaster's debt to Wells and expenses of abstract.

On January 15th, 1876, the lands were attached at the suit of appellants, and one Hart C. Fisher (who was then associated with them) in Worth county Circuit Court, October 24th, 1876, appellants (with said Fisher) obtained judgment against said Lancaster and order of sale of said real estate, under which judgment, by regular proceedings, the lands were sold and conveyed to plaintiffs.

After the commencing of said attachment suit plaintiffs filed their bill to have the deeds of Lancaster to Wells adjudged to be a mortgage and for a decree adjudging that said Tallman had accepted the deeds of release and quit claim from said Wells with notice of the mortgage character and effect of said deeds to Wells, and also that they, plaintiffs, be permitted to redeem said lands by the payment of said debts, interest and taxes. A decree was rendered in favor of said Fisher, Jackson & Co., permitting them to redeem, which decree was subsequently, on December 8th, 1881, reversed by the Supreme Court of Missouri, for the reason only that such action could not be maintained by attaching creditors.

Said Tallman having died testate, leaving the defendants his devisees, and the plaintiffs, having become purchasers of the interest of Lancaster, the mortgagor, in said lands, on January 22d, 1882, filed their bill in the Circuit Court of Worth County, Missouri, to be permitted to re-

deem said lands from the devisees of said Geo. C. Tallman, which suit in equity was removed to the Circuit Court of the United States for the Western Division of the Western District of Missouri, on the application of the defendants.

The defendant's answer was in substance a general denial. The case was tried on its merits upon the evidence.

On the trial in the Circuit Court plaintiffs' bill was dismissed and they were adjudged to pay the costs.

Upon agreement of the parties in open Court that the amount in controversy exceeded the sum of five thousand dollars, an appeal was allowed upon the giving of bond, which bond was duly given and approved.

ASSIGNMENT OF ERROR.

Comes the said appellants, and say that in said record and proceedings there is manifest error in this, to-wit :

That by the records aforesaid it appears that said judgment was given for said defendants, and against the plaintiffs; whereas, by the law of the land, it ought to have been given for said plaintiffs and against said defendants.

The said Court erred in deciding that the conveyance of Lancaster to Wells to secure the payment of the debt concurrently contracted, ceased to be a mortgage by reason of the release and quitclaim of the interest of said Wells to the ancestor and testator of defendants.

That said Court erred in deciding that the plaintiffs were not entitled to redeem the land described in the petition, from the equitable mortgage of A. N. Lancaster to Wells, and by Wells assigned to Geo. C. Tallman, the deceased testator of defendants.

APPELLANTS' BRIEF.

I.

Deed absolute in form, executed as security for a debt, is a mortgage.

(*a*) That the relation between Lancaster and Wells created by the deed executed September 15, 1875, by Lancaster to said Wells, conveying the real estate involved, was that of Mortgagor and Mortgagee, there can be no question.

The land was conveyed by deed absolute, but in trust to secure a note executed concurrently with the deed by Lancaster to Wells for the sum of $1,300, due in ninety days.

Reference to printed record.

See the testimony of Jourdan, pp. 16, 17, 22, 56.

See the testimony of Lancaster, pp. 17, 69.

See the testimony of Wells, pp. 18, 19, 36, Ans. to Int. 2.

AUTHORITIES.

O'Neill, et. al., vs. Capelle, 62 Mo. R., 202.

Brant, vs. Robinson, 16 Mo., 129.

Wilson, vs. Derunwrite, 21 Mo., 325.

Worley, vs. Dryden, 57 Mo., 226.

Miller, vs. Thomas, et. al., 14 Ill. R., 428.

Russell, vs. Southard, 12 How., (U. S.) 139.

Babcock, vs. Wyman, 19 How., (U. S.) 289.

Villa, vs. Rodriguez, 12 Wal., 323.

Peugh, vs. Davis, 6 Otto, U. S., 332.

Pierce, vs. Robinsin, a well considered case, 13 Cal., 116.

Once a mortgage, always a mortgage.

(*b*) The deed from Lancaster to Wells being a mortgage, it was subject to all the incidents and attributes of a mortgage, just as much so as if the defeasance had been written in it; and no contemporaneous, or other, or subsequent agreement would change its character as such, unless such agreement had been reduced to, or proved by some writing signed by Lancaster or some one thereunto by him, lawfully authorized, and such agreement be based upon and supported by a sufficient consideration. It not in writing such agreement would be invalid under the Statute of Frauds; and without a consideration to support it, a *nudum pactrun.*

Wilson, vs. Drumrite, 21 Mo., 325
Henry, vs. Davis, 7 John, ch., 40.
Peugh, vs. Davis, 96 U. S., 332.
Batty, vs. Snook, 5 Mich., 231.
1. Hill, Mortgager, 3rd Ed., pp. 67, 78.
Jones, on Mortgages, §§ 7—, 340.
Youle and Wife, vs. Richards, 1 Saxton Ch., 534.
Richard, vs. Eaton, 38 Conn., 434; 3 Wheat, U. S. 449.
Oliver vs. Piatt, 3 How. U. S. 333, 410.

There was no written agreement by Lancaster to release to Wells the equity of redemption, nor any consideration whatever. The contract as stated by Mr. Wells is as follows: "About the year 1878 I loaned him (Lancaster) "$500 cash, for which he gave me his note at ten per "cent interest, without security. He paid me nothing, "and after it had run about two years he renewed it, "adding principal to interest and giving me a new note, I

" think, at four months. Shortly after the last note be-
" come due. I wrote him, pressing payment, but getting
" no answer from him, I then wrote my brother-in law,
" Dr. T. M. Jourdan, to call on him and urge payment of
" my debt, and I learned from Dr. Jourdan that he could
" get no satisfaction. * * * I then concluded to at-
" tach these Missouri lands. I had commenced corres-
" ponding with an attorney with that view, when I re-
" ceived a letter from Jourdan stating that Lancaster had
" proposed that if I would raise him $500 or $600, in
" addition to what he already owed me, that he (Lan-
" caster) would convey me the said Missouri lands by an
" absolute deed as security, for what he then owed me;
" *but with a parol agreement if he did not pay me the note*
" *at the time it should become due, to-wit: in thirty days,*
" *that the land should become mine, and I should have the*
" *right to sell it to whom I pleased.*"

Wells furnished the money and Lancaster executed the note for $1,300, at 90 days, and the deed in form absolute to secure it.

See Wells' Ans. Int. 2, pp. 36, 37, Record.

See Jourdan's Ans. Int. 3, pp. 56, 57 of Record.

See Lancaster's Ans. Int. 4, p. 64 of Record.

The statute of frauds of the state of Missouri, so far as the same relates to this case, is as follows:

Rev. Stat. Mo., 1879, p. 421, § 2511.

" All declarations or creations of trust or confidence
" of any lands, tenements or heraditaments, shall be man-
" ifested and proved by some writing, signed by the party
" who is or shall be, by law, enabled to declare such trusts,

" or by his last will in writing, or else they shall be void ;
" and all grants and assignments of any trust or confidence
" shall be in writing, signed by the party granting or as-
" signing the same, or by his or her last will in writing,
" or else they shall be void."

There is no estoppel.

(*c*) Lancaster neither did or said anything to induce Tallman to make the purchase from Wells to estop himself or assigns from redeeming; and no proceedings were instituted to foreclose Lancaster's equity of redemption. Tallman negotiated with Dr. Jourdan, the agent of Lancaster, who during the negotiations mentioned the note given to said Wells. The first application Tallman made to Lancaster was to obtain information in regard to the title, and that was after he had purchased the land of Wells. Hence he was not induced to purchase by reason of any act or statement of Lancaster.

See Lancaster's ans. 16 and 17, page 66, Record.

See Tallman's ans. 5, page 51, Record.

There was then simply the naked attempt by parol to limit the right of redemption to the ninety days time, and convert a mortgage into an absolute title by the simple failure to pay at maturity of the debt, which by all the authorities could not be done. And such agreement being made at the time of the execution of the deed and not being inserted in it, nor contained in any writing, was against public policy and was void by the statute of frauds; being an attempt to affect an interest in real estate by parol.

It is conceded that parol evidence is admissable to show that a deed absolute in form is really a mortgage; but it never has been permitted to show, by parol, that a defeasible estate can be changed to an absolute one by parol.

II.

Grantee with notice that deed to his grantor was a security has no greater interest than the equitable mortgagee.

(*a*) The right of redemption in Lancaster and his assigns could be lost by the intervention of an innocent purchaser, for value, without notice of the defeasible character of Wells' title, and not otherwise.

Was Tallman such purchaser? We answer not.

First. The conveyance by Wells to Tallman being by *quit claim* deed, without covenants, operated simply as an assignment of Wells' interest—a simple release and *quit claim* of Wells' interest, whatever it should prove to be. And his interest being simply that of mortgagee, and defeasible—subject to redemption in the hands of Wells—was not changed or rendered absolute and non redeemable by being assigned or released to Tallman. That is to say: Tallman by his *quit claim* from Wells took nothing more than Wells actually possessed—assumed Wells' place and relation—stepped into Wells' shoes.

A party who takes by *quit claim* takes the title subject to all the infirmities which attach to it in the hands of the vendor, and such deed constitutes notice in itself of such infirmities, or rather constitutes what is termed conclusive presumption, that the claimant under

quit claim had notice in fact of all infirmities in his grantor's title.

Ridgeway vs. Holliday, 59 Mo., 444, 5.

Mann vs. Best, 62 Mo. 491, 496.

May vs. LeClair, 11 Wall. U. S., 231.

Lloyd vs. Karnes, 43 Ill., pp. 64, 61.

San Francisco vs. Lanton, 18 Cal., pp. 465, 465.

Carter vs. Wise, 39 Tex., 273.

Derrick vs. Bowen, 66 Ala., 162.

Stoffel, et. al. vs. Schrodes, et al., 62 Mo. pp. 147, 150.

Villa vs. Rodriguez, 12 Wall., 323.

In the case of Villa vs. Rodriguez, supra, it appears that the Villa family, consisting of mother—a widow—and seven children, conveyed by deed absolute a valuable ranche for the expressed consideration of $10,000, to a brother of the widow, Rodriguez; but which conveyance the Court found was given as security for a debt. Afterwards the defendant, Rodriguez, made a lease of the land for five years to the defendants, Steeles, and also a contract or agreement that at the end of the lease, or within five days after its expiration, he would sell to said Steeles for the sum of $25,000 in gold, and execute to them a quit claim deed conveying all his interest in the ranche to them, with covenant of special warranty, etc.

Suit was instituted by one Alexander under an agreement with the widow Villa and her children, declaring the deed to Rodriguez a mortgage and asking to redeem the premises, etc.

To this application to redeem the Steeles claimed in their answer to be innocent purchasers for value without

notice of the defeasible character of Rodriguez title, and also sought to estop the Villas by reason of the fact that they knew of the contract with Rodriguez and the fact that they, the Steels, had made lasting and valuable improvements on the ranche, while the Villas looked on and saw the work and expenditures going on without objection or notice to them that the title of Rodriguez was other than an absolute one, &c.

The Court, speaking through Mr. Justice Swayne, upon this branch of the case at page 338, says: "The lessees and their assignees insist that they are *bona fide* purchasers without notice. This proposition can not be maintained."

The Court then assigns two reasons why the proposition can not be maintained—the second reason being in the words of the Court as follows, to-wit: "This contract calls for a quit claim deed. The result would be "the same if such a deed had been executed and full payment made, without notice of the adverse claim. Such "a purchaser can not have the immunity which the principal sought to be applied, gives to those entitled to its "protection. This contract may, therefore, be laid out of "view. It is no impediment to the assertion of the complainant's rights whatever they may be. It does not "in any wise affect them."

We take it from this view of the force and effect of a quit claim deed, that notwithstanding the deed from Villas to Rodriguez was absolute in form, and that he had sold and conveyed to the Steeles, for a valuable consideration and without notice of the adverse claim of the Villas of a right to redeem, yet, provided the conveyance was a quit

claim deed, their plea of *bona fide* purchase for value without notice, would not avail them, nor stand in the way of the right of redemption by the Villas. This being the case, and applying this doctrine to the case in hand, the deed from Wells to Tallman can not—being purely *quit claim*—shelter Tallman, nor his heirs, from the right to redeem the premises in controversy, in this case, by Lancaster or his assignees, and we deem the case of Villas vs. Rodriguez (supra) as conclusive of the case in hand upon this point; and that this point is the hinge upon which the decision must turn.

(*b*) Mr. Tallman also had notice of the nature of Wells' claim upon the land in controversy. The evidence of Dr. Jourdan, the agent of Lancaster, was as follows:

"Int. 32. You may state whether or not the note "was mentioned, and the amount due upon it, during your "interviews with Mr. Tallman."

"Ans. It was; and I think that I stated in round "numbers that it would not exceed ($1,400) fourteen "hundred dollars. I did not know just then what addi- "tional expenses Wells had been to."

"Int. 33. State whether or not the note was shown "to Mr. Tallman during your negotiations."

"Ans. I do not remember that it was."

"Int. 34. State whether or not the note was pro- "duced and the interest computed in your office on the "day the deeds were delivered and money paid."

"Ans. I can't show (say) that the note was shown "to Mr. Tallman, but I had the note in my office, and "then and there received the interest, and told Mr. Tall- man the amount." Record p. 60.

Jones on Mortgages, § 340.

Williams vs. Thornton, 11, Paige 459.

(*c*) Mr. Tallman also had notice of the attachment of these lands by plaintiffs in the suit of H. C. Fisher et. al. vs. Lancaster, which suit was commenced January 15, 1876, and the deeds were not delivered to nor the consideration paid by Mr. Tallman until the 18th or 20th of the same month.

Dr. Jourdan testifies:

"Before they (the abstracts) were received Mr Tall-
"man came on and completed the matter by paying me
"and receiving the deeds, which must have been from the
"18th to the 20th of January, as my books seem to
"show." Record p. 63. Ans. to int. 117.

(*d*) The claim of appellants that the transaction between Lancaster and Wells was a mortgage with a power of sale, and that the subsequent sale to Tallman was the execution of such power, is not sustained by the evidence, and is untenable.

The agreement as testified to by Mr. Wells (evidence above quoted) was that if the note was not paid at the time it should become due the land "should become mine "and I should have the right to sell it to whom I "pleased."

The evidence of Mr. Lancaster was as follows:

"I did not see Wells personally in the transaction. I
"stated to Dr. Jourdan that if he would procure from
"Wells the sum of money I wanted, about thirteen hun-
"dred dollars, I would convey these lands to Wells, abso-
"lute, but that he should give me the privilege of paying
"it in ninety days, otherwise he might sell it as he
"pleased. That was the substance of it. He might sell
"it or hold it."

Record p. 64. Ans. to Int. 4.

The evidence of Dr. Jourdan was as follows:

"I wrote Wells * * * that if Wells would raise "the money for this time, he (Lancaster) would convey "the land direct to him, and if not redeemed at maturity "he should sell the land or might keep it (I think were his "exact words)."

Record p. 56. Ans. to Int. 3.

Such parol authority to sell was, evidently, not given as a power of sale, as a means of collecting the amount of such debt secured, but was a declaration of the interest which Wells would hold in the land after default in payment of the debt; that the land would be his, Wells', to do with as he pleased.

Lancaster was insolvent, record p. 68, interrogations 26 to 31. These lands were held as security for a debt of less than one-half their value; appellants have offered and do offer to pay the debt of Lancaster and all taxes paid by Tallman and his representatives, and tender the amount in court and ask that an account be taken to determine the amount thereof, and ask that the judgment of the honorable Circuit Court be reversed, and that that Court be ordered to proceed with the cause according to the equities and rights of the parties.

Respectfully submitted,

T. J. Johnston.

H. M. Jackson,

Attys. for Appellants.

A. S. Everest, of Counsel.

117679

SUPREME COURT U.S.
FILED
MAR 2 1886
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

No. 205.

Joseph Jackson and John C. Terhune,
Appellants,

vs.

Frederick H. Lawrence, et al.,
Appellees.

Appeal from the Circuit Court of the United States for the Western Division of the Western District of Missouri.

ABSTRACT AND BRIEF OF APPELLEES.

B. F. LUCAS,
Attorney for Appellees.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 205.

JOSEPH JACKSON AND JOHN C. TERHUNE, Appellants,

against

FREDERICK H. LAWRENCE, Executor of the Last Will and Testament of GEORGE C. TALLMAN, Deceased; JULIA TALLMAN, Widow of the said GEORGE C. TALLMAN, Deceased; EDWARD A. TALLMAN, HENRY TALLMAN, JULIA P. TALLMAN, ELIZA S. LACKEMEYER, and —— LACKEMEYER, her Husband; MARY L. LAWRENCE and FREDERICK H. LAWRENCE, her Husband; REBECCA BOARDMAN and —— BOARDMAN, her Husband, Appellees.

ABSTRACT OF THE BILL.

This suit was commenced originally in the State court and was transferred to the circuit court of the United States for the western division of the western district of the State of Missouri on the ground of the citizenship of the defendants. The object of the suit was to have three several absolute deeds executed and delivered by one Alvin N. Lancaster to one Edward L. Wells on the 15th of September, 1875, declared a mortgage, and that plaintiffs and appellants be allowed to redeem the lands described in said deeds as creditors of the said A. N. Lancaster.

The material allegations of the bill are as follows:

After setting out the death of George C. Tallman on the 5th day of May, 1880, after having made his last will and testament, wherein he appointed Frederick H. Lawrence, one of the defendants herein, his executor, the names of his widow and heirs, the due probate of the said last will and testament, and the granting of letters testamentary thereon, and that in and by the said last will and testament the said George C. Tallman devised and bequeathed all his property, real, personal, and mixed, to the said Frederick H. Lawrence, in trust for his widow and heirs, the said bill alleges that at the time the cause of action therein stated accrued the plaintiffs therein were copartners with one Hart C. Fisher in the banking business, and that on the first day of September, 1877, the plaintiffs purchased all the interest of the said Hart C. Fisher in the copartnership, its business and property of every kind, including the property now in controversy, and that plaintiffs, ever since the said purchase, had been, and still were, copartners in the banking business at Maryville, Missouri.

Plaintiffs further alleged that on the 9th day of August, 1875, Alvin N. Lancaster and one E. P. Sampson were indebted to the firm of Fisher, Jackson & Co., by promissory note, in the sum of $1,000, and that on the 5th day of August, 1875, the said Lancaster was the owner in fee of the lands in controversy in this suit, describing them in accordance with the Government surveys and subdivisions, and that said lands were all the property then owned by the said Lancaster, and that the said E. P. Sampson was totally insolvent.

They further allege that on the 15th day of January, 1876, they, together with the said Hart C. Fisher, instituted suit in the circuit court of Worth county, Missouri, against the said Alvin N. Lancaster by attachment, and caused the lands in controversy to be attached as the property of said Lancaster, who was a non-resident of the State, and that on the

24th day of October, 1876, they recovered judgment in said suit against said Lancaster for $896.16⅔.

That on the 26th day of February, 1878, plaintiffs sued out executions on said judgment to the sheriffs of the counties of Atchison, Nodaway, and Worth, which said executions were levied upon the lands in controversy, and that the same were duly sold by the said sheriffs, respectively, upon said executions, and were purchased by these plaintiffs, and that deeds were duly executed and delivered to them by the said sheriffs, respectively, by which said sales and deeds they allege the title to all of the said lands became vested in the plaintiffs, subject to the incumbrance thereinafter mentioned.

The bill further alleges that on the 16th day of September, 1875, the defendant, Edward Wells, loaned to the defendant, Alvin N. Lancaster, the sum of $1,300, on ninety days' time, for which sum Lancaster gave Wells his promissory note, payable in ninety days, with interest at the rate of *ten per cent. per annum* after the maturity; and that for the purpose of securing the payment of said note Lancaster executed and delivered to Wells a deed absolute in form for all the lands now in controversy, but that by a parol agreement, made at the same time, Wells was to reconvey the said lands to Lancaster on payment of the said note, which transaction between Lancaster and Wells plaintiffs allege constituted the said deed a mortgage.

The bill further alleges that on the 20th day of January, 1876, and after the lands in controversy had been attached at the suit of plaintiffs against Lancaster, the said Wells sold, assigned, and transferred all his right and claim to said lands as mortgagee to George C. Tallman, by deed of quitclaim, the said Tallman at the time having notice of the claim of plaintiffs, and that the interest of the said Wells in said lands was that of mortgagee only.

All the defendants appeared except Alvin N. Lancaster and Edward L. Wells, who were proceeded against under section 738 of the Revised Statutes of the United States.

ABSTRACT OF ANSWER.

The defendants appearing filed their joint and several answer, wherein they admitted the making of his last will and testament by George C. Tallman, in which he appointed the defendant, Frederick H. Lawrence, the executor thereof; that in and by the said last will and testament the said George C. Tallman devised and bequeathed all his property, real, personal, and mixed, to the said Frederick H. Lawrence in trust for his heirs and devisees; that the said George C. Tallman died on the 5th day of May, 1880, and the persons stated in the bill of complaint were and are his widow, heirs, and devisees.

The said answer further admits the probate of the said will of the said George C. Tallman and the granting of letters testamentary thereon to the said Frederick H. Lawrence, and that the said Lawrence assumed and took upon himself the office and duties of executor of the said last will and testament.

Defendants in and by their said answer stated that they had no knowledge or information sufficient to enable them to form a belief as to whether, at the time stated in said bill of complaint, the plaintiffs were partners with one Hart C. Fisher in the banking business, or whether at any time thereafter plaintiffs had purchased the interest of the said Fisher in said banking firm, its business and property; or whether, if such purchase was made, it included the property now in controversy; or whether the plaintiffs, since the said alleged purchase from the said Fisher, have been and still are copartners in the banking business in Maryville, Mo.; or whether on the 9th day of August, 1875, or at any other time before or after that date, the said Alvin N. Lancaster and one E. P. Sampson were indebted to the firm of Fisher, Jackson & Co. in the sum of $1,000, or any other sum, by promissory note or otherwise. But the said answer admits that on the 5th day of August, 1875, the said Alvin

N. Lancaster was the owner and seized in fee of the several tracts of land in plaintiffs' bill of complaint described, situated in the said counties of Worth, Nodaway, and Atchison, in the State of Missouri; but the said answer denies that the said tracts of land were all the property then owned by the said Lancaster, but on the contrary thereof defendants averred that they were informed and believed that at the time aforesaid, and for a considerable time thereafter, the said Lancaster owned and was possessed of a large amount of real and personal property; but as to whether at the time aforesaid the said E. P. Sampson was or still is insolvent they had no knowledge or information sufficient to enable them to form a belief.

The answer further states that defendants have no knowledge or information sufficient to enable them to form a belief as to whether on the 15th of January, 1876, plaintiffs, together with Hart C. Fisher, instituted suit in the circuit court of Worth county against the said Alvin N. Lancaster by attachment, or whether they caused the lands now in controversy to be attached as the property of the said Lancaster, or whether on the 24th of October, 1876, plaintiffs obtained judgment against said Lancaster for the sum of $896.16¾, or whether on the 26th day of February, 1878, plaintiffs sued out of said court executions on said judgment to the sheriffs of Atchison, Nodaway, and Worth counties to be levied on the lands now in controversy; or whether the said sheriffs or either of them did levy upon or sell said lands or any part thereof, or executed or delivered any deed or deeds therefor; but the said answer denies that the deed or deeds made by the said sheriffs of Atchison, Nodaway, and Worth counties, or either of them, to the plaintiffs, if any such deed or deeds were made, conveyed any title to the lands in controversy to the plaintiffs, subject to the incumbrances in plaintiffs' bill of complaint mentioned or in any other manner whatever.

The said answer further states that the said defendants have no knowledge or information sufficient to enable them

to form a belief as to whether on the 16th day of September, 1875, the defendant Wells loaned to the defendant Lancaster the sum of $1,300 or any other sum for which the said Lancaster gave to said Wells his promissory note payable in ninety days, with interest at *ten per cent.* after maturity, or whether Lancaster executed a deed to Wells for the lands now in controversy under any agreement that on the payment of the said note or any note by Lancaster to Wells the said Wells was to reconvey the said lands to Lancaster; but the said answer denies that any agreement was made between Lancaster and Wells constituting the deed executed and delivered by said Lancaster to the said Wells a mortgage or subjecting it to any of the incidents of a technical mortgage.

The answer further denies that on the 20th day of January, 1876, and after the said lands had been attached at the suit of plaintiffs against Lancaster, the said Wells sold, assigned, and transferred all the right and claim he had and held to said lands as mortgagee to George C. Tallman, or that said Tallman had notice at the time of the claim of the plaintiffs, or that the interest of the said Wells in the said lands was that of a mortgagee only.

The answer then states the facts to be that on the 15th day of September, 1875, the said Alvin N. Lancaster sold and conveyed the several tracts of land now in controversy to Edward Wells by absolute deeds, with covenants of general warranty, which deeds were duly recorded in the several counties in which the lands were situated; that during the latter part of the month of December, 1875, the said Wells, by his agent, Dr. Jordan, of Chicago, entered into negotiations with the said George C. Tallman for the sale of these lands by Wells to Tallman; that those negotiations were finally concluded on the 5th day of January, 1876, by the said Tallman purchasing the lands from Wells and by Wells executing and delivering absolute deeds for the same, which deeds were duly recorded in the several counties in which

the lands lay, and that said lands made up a part of the estate devised by the said Tallman to the defendant, Frederick H. Lawrence.

The answer further alleges that at the time when the negotiations were going on between Wells and Tallman for the sale and purchase of the lands and at the time said sale was consummated by the execution and delivery of the deeds therefor the said Tallman had no knowledge whatever of any claim of plaintiffs against Lancaster, nor had he any knowledge that the title of Wells was anything other than the absolute title shown by the deeds from Lancaster to Wells as recorded, and that the said Tallman intended to purchase and did purchase the absolute title to the said lands, for which he paid a valuable and what at the time of the purchase was a fair consideration.

To this answer of defendants plaintiffs filed a general replication, denying all the allegations contained in the answer.

ABSTRACT OF TESTIMONY.

Dr. Thomas M. Jordan testified on part of plaintiffs:

Remember of Mr. Lancaster conveying certain lands in counties named (Worth, Nodaway, and Atchison) to Edward L. Wells about September, 1875.

About the time mentioned I wrote to Wells, by the request of Lancaster, to know if he could raise Lancaster some money—$1,300 or $1,500—and hold those lands as security for payment in ninety days; that Lancaster would convey the lands absolutely, and if they were not redeemed at ninety days Wells should sell the land or keep it. Wells agreed to raise the money for this length of time, directed me to have the land conveyed and he would send the money immediately, which he did. Lancaster executed deed and delivered it to me, and I sent it to Wells, conveying the lands. About the time the note became due Wells wrote to me to see Lancaster and urge payment, which I did. Lancaster requested me to tell Wells to sell the lands, naming a Mr. Mattison, of McComb or Galesburg, as a probable purchaser. Mattison

declined to purchase, and Wells urged me to have Lancaster to pay the note, as he could not get a cash offer for the land. About this time I entered into negotiations with George C. Tallman relative to purchasing the lands. Tallman said he would pay $1,300, the amount that Wells claimed Lancaster owed him. I wrote to Wells, sending him deeds prepared from him to George C. Tallman.

A few days after this I was in Macomb, where Wells resided. He handed me the deeds, having previously executed them, together with Lancaster's note, which I brought to Chicago, and shortly after that Mr. Tallman came on here, paid the amount of money, and took the deeds.

Have known Mr. Tallman about eight years. Think Mr. Lancaster first suggested to me that Tallman might be a probable purchaser of these lands. Can't tell just what time these suggestions were made, but think it was before note fell due. Lancaster said Wells should have his money promptly; that if he, Wells, could not sell the lands to Mattison he, Lancaster, thought Tallman would buy them. Think Tallman prepared the deeds; he handed them to me or sent them to me, but could not be positive who filled them out.

Think I had given Tallman a description of the lands before the deeds were delivered. Think I advised Tallman that I knew nothing of the title to the lands, but had been assured by Lancaster that the title was good. Do not remember of having said anything to Tallman before the sale to him as to how Wells became possessed of the lands. The amount paid by Tallman to me for Wells was the amount of principal and interest due on Lancaster's note, with some expenses of recording deeds and examining titles paid by Wells added. Tallman and I agreed on the amount he was to pay for the land about the first of January, possibly in December previous. Made that agreement in my office here in the city (Chicago). The sum received was the same Tallman and I had agreed on in January or December previous. The note was mentioned, and I think I stated, in round numbers, that it would not exceed $1,400. Did not know then just what additional expense Wells had been to. I do not remember of the note being shown to Tallman during the negotiations. I had the note in my office and calculated the interest there. I told Tallman nothing further than that Wells had authorized me to deliver the deeds on pay-

ment of the amount of money—thirteen hundred and fifty dollars. Do not remember of anything being said about Wells holding the lands for the payment of the note and interest. Within a day or two of the delivery of the deeds to Tallman I handed the note to Lancaster. I made no representation to Tallman at the time of the sale as to the value of the lands. I did not know their value.

On cross-examination witness stated:

In the sale to Tallman I was acting in the interest of E. L. Wells. For two years, as near as I can remember, prior to September, 1875, Lancaster was owing Wells $500 or $600, and he had been urging payment. Lancaster suggested to me that if Wells could raise $1,300 or $1,500 he would convey the lands direct to Wells as security, and that Wells should keep out his pay for the money already due him and let Lancaster have the balance. It was on this security that Wells raised the money; Lancaster was to have ninety days to repay the money and obtain a conveyance. The deed to Wells was to be absolute on failure of such payment, according to Lancaster's statement and agreement. Lancaster never paid the money. George C. Tallman resides in Brooklyn, New York. Did not see Tallman or have any negotiations with him about the purchase of the lands until after Lancaster's interest in them had expired. So far as I know, Tallman had, at the time he purchased the lands, no knowledge nor any reason to believe that Lancaster had any interest whatever in them. I did not tell Tallman, nor do I know of any other person telling him, that Lancaster had any agreement with Wells as to the redemption or reconveyance of the lands. I do not know what Tallman's knowledge, at the time of the negotiations and purchase of the lands by Tallman, may have been, but there never was anything said between him and me as to the matters between Wells and Lancaster.

ALVIN N. LANCASTER, on part of plaintiffs, testified as follows:

With Wells direct I had no contract for the sale of these lands. I stated to Dr. Jordon if he could procure from Wells the sum of money I wanted—about $1,300—I would convey these lands to Wells absolutely, but that he should give me

the privilege of paying it in ninety days; otherwise he might sell it as he pleased. The agreement was not in writing. At the time I executed the deed or deeds to Wells I executed a note to Wells, payable in ninety days, for $1,300—I think without interest, the interest being calculated in the note. Of my own knowledge I know nothing of what Wells did with the lands. I am informed that he sold them to George C. Tallman.

Saw Tallman many times, suppose fifty times, while his negotiations with Jordon were going on. I should think that on at least two occasions we had conversations relative to these lands. As I recollect it the substance of these conversations was as to the title. I gave him the chain of title; told him the title was indisputable except an amount of back taxes. He informed me that he had bought the lands. This was at the first conversation. Had the first conversation with him about the 15th or 16th of January, 1876.

On his cross-examination he says:

It was for the purpose of paying Wells what I owed him and for raising money to obtain some quit-claim deeds that I obtained the $1,300 from Wells. I had ninety days under our agreement to repay Wells and obtain a reconveyance of the lands. If the money was not paid within that time I was to have no interest in the lands whatever. No part of the money was ever paid by me. I never informed Tallman in any way of the arrangement between Wells and myself. I don't think that he ever knew there was a note given by me to Wells; I never mentioned it; don't think he knew of the arrangement between Wells and me. I have not now, nor have I at any time since the expiration of the ninety days within which I was to repay Wells his money had, any interest in those lands. The lands were worth just what they could be sold for in cash. I offered them for $2,000 and could not get an offer.

EDWARD L. WELLS, a witness on behalf of plaintiffs, testified as follows:

I had business transactions with A. N. Lancaster. He conveyed to me land in Missouri, and the description corresponds with that mentioned in the interrogatory, except that

instead of the northeast quarter of the southwest quarter of section 12, in 65, 38, my memorandum has it the southeast quarter of the southwest quarter.

In 1872 I loaned Lancaster $500 cash, for which he gave his note at 10 per cent. without security. He paid nothing; and after it had run about two years he renewed it, adding in interest—renewed for four months. After it matured I wrote to my brother-in-law, Dr. Jordon, to urge payment. Could get no satisfaction, and I concluded to attach these Missouri lands. Corresponded with an attorney with that view, when I received a letter from Jordon, stating that Lancaster had proposed that if I would raise him $500 or $600 in addition to what he already owed me that Lancaster would convey to me the Missouri lands by absolute deed as security for what he would then owe me, but with a parol agreement that if he did not pay at the time the note became due, to wit, in 90 days, that the land should be mine and I should have the right to sell it to whom I pleased. I did raise him some more money which, with his former indebtedness, amounted to just $1,300, for which he gave me his note at 90 days and conveyed the lands to me. I received the money for the $1,300 about the last of January, 1876, from Dr. Jordon. I handed the deeds to Tallman to Dr. Jordon in person about the 4th or 5th of January, 1876. I never had any correspondence or conversation with Tallman in reference to these lands; never had any conversation with Lancaster in reference to conveying said lands to Tallman. My impression is that Tallman's name as grantee was in the deeds when I delivered them to Dr. Jordon.

On cross-examination he testified:

The $1,300 note was past due when I made deeds to Tallman, past due twenty or twenty-two days. No part of said note had been paid at the time I made the deeds. I had requested Dr. Jordon to find a purchaser for the lands about ten days before that. When he came down from Chicago he told me to make out deeds to George C. Tallman, and when he returned to Chicago he would send me the money. So far as I was concerned, the sale to Tallman was made in good faith, and to my knowledge Lancaster had nothing to do with it; nor did he in any way or manner influence or

induce me to make it. At the same time I delivered the deeds to Jordon I also delivered to him Lancaster's note to be surrendered to him. So far as I know, Tallman had no knowledge as to the manner in which I held the lands from Lancaster. I was to deed back the lands to Lancaster if he paid the note before or at the time it became due; if he did not redeem it by that time he was not to have the right to redeem it at all, and I was to have the right to do with it as I pleased.

George C. Tallman, on behalf of defendants, testified:

At the time I purchased the land from Wells I had not heard nor did I know of any note held by Wells against Lancaster. I first heard of such a note after this suit was brought. There were back taxes due on the lands when I purchased them amounting to about $100, and I have since paid them. When I bought the lands from Mr. Wells through Mr. Jordon I supposed I was paying a moderate price. That was the inducement for me to purchase. I did not and do not consider that I bought the lands for an inadequate price. I bought absolutely and for myself with my own money.

Dr. J. M. JORDON, on behalf of defendants, testified as follows:

I think the first negotiations between Mr. Tallman and myself for the purchase of these lands was by a personal interview—not positive as to that. At an interview some time in December, 1875, Mr. Tallman proposed to buy the lands and I think the price was then fixed at $1,350. In that first interview I think I stated that Mr. Wells, of Macomb, Illinois, had a letter from an attorney in Maryville, Missouri, stating the title was good to the lands as far as he had examined. Tallman at that interview agreed to buy the lands. Nothing was said by me to Tallman as to Wells holding the lands as security for a debt due from Lancaster. I was acting as the agent of Wells and contracted the lands as an absolute sale. As I now remember I had two interviews with Tallman relating to this purchase. The matter was closed at the second interview. Mr. Tallman gave me

his check for the sum of $1,350, I think, and I delivered to him the deeds. I had no interest in the land whatever other than acting as agent for Wells.

The following is a certified copy of the deed from Lancaster to Wells for the lands lying in Atchison county. The deeds for the lands in Nodaway and Worth counties are the same in all particulars, except as to the description of the lands conveyed:

This indenture, made this fifth day of November, in the year of our Lord one thousand eight hundred and seventy-four, between Alvin N. Lancaster (widower), of the county of Cook and State of Illinois, party of the first part, and Edward L. Wells, of the county of McDonough and State of Illinois, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand dollars ($1,000) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, and sell, unto the said party of the second part, his heirs and assigns, all the following-described lot, piece, or parcel of land situated in the county of Atchison and State of Missouri, to wit: The west half of the northeast quarter and the northeast quarter of the northeast quarter of section thirty-four, in township sixty-six north, range thirty-nine west, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, hereditaments, and appurtenances, to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever, and that the said party of the first part, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, shall and will warrant and forever defend.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed, and delivered in the presence of—

ALVIN N. LANCASTER.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James R. Lancaster, a notary public in and for said county of Cook, in the State aforesaid, do hereby certify that Alvin N. Lancaster, personally known to me to be the same person whose name is subscribed to the foregoing deed as grantor, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 5th day of November, A. D. 1874.

[SEAL.] JAMES R. LANCASTER,
Notary Public.

Filed for record September 30th, 1875.

J. W. SMITH,
Recorder.

STATE OF MISSOURI, } ss:
County of Atchison, }

I, John W. Smith, clerk of the circuit court and *ex-officio* recorder for the county of Atchison and State of Missouri, do hereby certify that the foregoing is a true, correct, and complete copy of deed now on record in my office, in book 22, on page 392.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at office in Rockport, Missouri, this 2d day of October, A. D. 1882.

[SEAL.] JOHN W. SMITH,
Circuit Clerk and Recorder.
By W. T. BUCKHAM,
Deputy.

The cause came on for final hearing in the circuit court upon bill, answer, replication, and proofs, and upon that hearing the court dismissed the plaintiffs' bill and the cause is here now for final review.

That the decree pronounced by the court below ought to be affirmed, I will endeavor to show in the following

ARGUMENT.

The questions that present themselves for determination in this case, under the evidence, are:

FIRST. Were the conveyances from Lancaster to Wells, of the 15th of September, 1875, absolute on their face and containing the usual covenants of general warranty, to be held and taken to be merely a mortgage, in view of all the evidence and circumstances in the cause?

SECOND. If the conveyances from Lancaster to Wells were to be regarded simply as a mortgage, in virtue of the cotemporaneous parol agreement, as proved by the evidence (printed record, pp. 36, 37, 38, 39, 40, 41, 42, 43, 47, 48, and 56 to 71), was it not a mortgage with power in Wells to sell the lands in the event of the debt which that mortgage was given to secure not being paid within the time limited by the agreement which constituted the conveyances a mortgage? And is not the sale by Wells to Tallman to be taken and held to have been made in execution of that power?

THIRD. But if the conveyances from Lancaster to Wells are, under the evidence in the cause, to be regarded simply as a mortgage without any power of sale, had Tallman any such notice of the character of the transaction between Lancaster and Wells as would take from him the character of an innocent purchaser?

AND, FOURTH. Is not Lancaster, under all the facts and circumstances of the case, estopped from setting up the cotemporaneous parol agreement in opposition to his own absolute deeds as against a purchaser from Wells, who had no knowledge of the existence of such agreement, and who in ignorance of the secret arrangement between Lancaster and Wells paid a fair price for the lands? And if Lancaster is estopped from setting up such secret agreement are his cred-

itors, in the absence of all fraud, not also estopped from setting up such agreement?

These, it seems to me, are all the questions that legitimately arise, and I will endeavor to present the arguments and authorities bearing upon them in their order.

I.

Then were the conveyances from Lancaster to Wells to be held and taken to constitute a mortgage merely? Although the deeds from Lancaster to Wells were dated and acknowledged on 5th day of November, 1874 (printed record, p. 27), they were not delivered until the 15th day of September, 1875. It is true that when a conveyance, absolute in form, has been executed and delivered, accompanied by a cotemporaneous parol agreement, that the deed is only given as a security for an existing indebtedness, and that the grantee is to reconvey the property upon receiving payment of his debt, such parol agreement operates as a defeasance and renders the transaction a mortgage.

It is also true that by the terms of the parol agreement proved to have been made in the present case Lancaster was to have a reconveyance of the lands provided he paid a certain sum of money within the period of ninety days from the making of the agreement. But it is not true—

"That a deed absolute in its terms, delivered in payment "of a debt, is converted into a mortgage merely because the "grantee therein gives a cotemporaneous stipulation binding "him to reconvey on being reimbursed, within an agreed "period, a sum equal to the debt and the interest thereon. "If the conveyance extinguishes the debt, and the parties "so intend, so that a plea of payment would bar an action "thereon, the transaction would be a conditional sale not-"withstanding."

Turner and Wife vs. Kerr et al., 44 Mo., 429.

"In determining whether a transaction is a mortgage or "a conditional sale the understanding and purposes of the "parties are to be considered. If they intend an extinguish- "ment of the debt, and the vesting of an absolute title sub- "ject only to an agreement to recovery upon specific terms— "as the payment of an amount equal to the canceled debt "and interest—such a transaction is a conditional sale and "not a mortgage; that the amount of money to be paid as "a condition to the right to demand a reconveyance is meas- "ured by the amount of debt and interest is a circumstance "of no controlling importance."

Ibid.

Now, in determining the nature and character of the transaction between Lancaster and Wells, all the circumstances surrounding or in any manner connected with that transaction must be considered in order to arrive at "the understanding and purposes of the parties." By an examination of the testimony adduced by the plaintiffs themselves it will be seen that Lancaster had been indebted to Wells for a long time, and that Wells had been urging and insisting on payment of the debt. According to the testimony of Wells, taken on behalf of plaintiffs, a large portion of this indebtedness had been running from 1872, and in 1875 Wells was taking steps to attach these very lands in satisfaction of that indebtedness. In this condition of affairs Lancaster proposes to convey the lands now in controversy to Wells by absolute conveyance if Wells would raise him $500 or 600, in addition to his present indebtedness, and if Wells would agree, by parol, to reconvey the lands at the end of ninety days on condition that Lancaster should pay to Wells, within the said period of ninety days, a sum equal to the amount of the former indebtednes, $500, with the interest that had accrued thereon and that should accrue thereon, and the additional sum that Wells was, by said proposition, to advance, together with its interest. By the terms of this

proposition if Lancaster failed to pay the amount in ninety days the lands were to belong absolutely to Wells, and he was to have the right to sell them to whomsoever he pleased and make his money out of them. Wells accepted this proposition and raised for Lancaster an additional amount of money, which, together with his previous indebtedness, amounted to the sum of $1,300. This was the measure of the sum Lancaster was to pay to Wells to entitle himself to a reconveyance. But he was to pay it within the period of ninety days, and if he failed to pay within that period his right was gone and Wells was to sell the land to obtain his money. Thus, by the express agreement of the parties, time was made of the essence of the contract. The transaction between Lancaster and Wells was, therefore, an absolute sale and conveyance by Lancaster to Wells and an agreement to resell and recovery by Wells to Lancaster on condition that Lancaster would, within the prescribed period, pay to Wells the sum of $1,300. It was a conditional sale by Wells to Lancaster and not a mortgage from Lancaster to Wells.

That the parties to that transaction so understood it is clear from their evidence. Wells testified that if Lancaster did not pay within the time specified he was to have no further right or claim to it, and Lancaster testified to the same thing, and further that from the expiration of the ninety days within which he was to pay the money he neither had nor claimed to have any right or interest in the land whatever.

II.

But suppose the transaction between Lancaster and Wells was a mortgage; suppose the cotemporaneous agreement proved by the testimony of Jordon, Lancaster, and Wells is to be taken and held to amount to a defeasance, so as to change the absolute deed into a mortgage; still you must take the whole of that agreement together, and, taking the whole

agreement together, if it proves the transaction to be a mortgage, it is a mortgage with power in the mortgagee to sell the mortgaged lands on the failure of Lancaster to pay the debt thereby secured. (Printed record, pp. 22, 24, 25.)

By the testimony of Dr. Jordon the agreement was that if Lancaster did not pay the money in ninety days Wells should sell the land or he might keep it.

By the testimony of A. N. Lancaster the agreement was that he, Lancaster, would convey the lands to Wells absolutely, but that he, Wells, should give Lancaster the privilege of paying it (the money) in ninety days; otherwise he, Wells, might sell it as he pleased.

And by the testimony of E. L. Wells the agreement was that Lancaster would convey the lands to him, Wells, by absolute deed as security for what he would then owe him, but with a parol agreement that if he, Lancaster, did not pay at the time the note became due, to wit, in ninety days, that the land should be his, Wells', and he should have the right to sell it to whom he pleased.

This is the substance of all the plaintiffs' evidence as to what the parol agreement on which they rely was. If it proves the transaction to have been a mortgage, it as fully proves it to have been a mortgage with a power in the mortgagee to sell and convey the lands mortgaged on failure of the mortgagor to pay the debt secured by it at the time stipulated.

It will not do to say that the power to sell was a parol power, and, therefore, inoperative. The whole agreement rested in parol, and you cannot select a particular part out of the agreement and say this part is valid and binding and reject the residue. The agreement is an entirety, and is good *in toto* or bad *in toto*. It was good and binding in all its parts and on both parties to it, or it was not binding on either.

Nor is it any objection to the power of sale or to the exercise of that power that no notice of the time, terms, or place

of sale is stipulated for in the agreement. Parties to a mortgage or deed of trust with power of sale may stipulate for the particular kind of notice which shall be given of the sale, or they may stipulate for a sale without any notice. Thus: "The parties might have dispensed with notice alto-"gether."

Martin *vs.* Paxon, 66 Mo., at page 266.

In this case the evidence establishes the power in Wells to sell as clearly as it establishes the making of any part of the agreement. In creating the power to sell the parties dispensed with notice, and the power could be as well executed by a private sale as by any other, and it was so executed.

But it may be objected that the sale by Wells to Tallman cannot be regarded as having been made in execution of the power conferred by the agreement between Lancaster and Wells because no reference was made in the deeds to Tallman to that power.

But such a reference was wholly unnecessary, as was decided by the supreme court of the State of Missouri in the case of Campbell *vs.* Johnson, 65 Mo., 439.

In that case Mr. Justice Hough, adopting the language of Lord Redesdale, says: "When a person acts for a valuable "consideration he is understood in equity to engage with the "person with whom he is dealing to make the instrument as "effectual as he has power to make it."

Here there can be no question about a valuable consideration having been paid; and under the evidence in the cause Wells had the power to make the conveyance to Tallman effectual for the purpose of passing the fee-simple in the lands in controversy, and this whether he stood in the relation of an absolute purchaser from Lancaster or of a mortgagee with power to sell. That the parties intended to pass a fee-simple the evidence leaves no room to doubt.

Wells, in his testimony on behalf of plaintiffs, proves it,

and the evidence of Mr. Tallman, taken on the part of the defense, proves it, and there is no evidence in the cause that shakes this evidence.

III.

But even if the transaction between Lancaster and Wells had been a mortgage, and a mortgage without a power in the mortgagee to sell, still George C. Tallman, in his lifetime, and the present defendants occupy a very different position from that occupied by Edward L. Wells.

Wells was a party to the parol agreement which constituted the transaction between himself and Lancaster a mortgage, and of course had full knowledge of it. Tallman was neither party nor privy to that agreement and had no knowledge of its existence at the time he purchased from Wells.

Although plaintiffs allege in their bill of complaint that Tallman had notice of the transaction between Wells and Lancaster and that the interest which Wells had in the lands was that of a mortgagee only, yet they certainly cannot and will not pretend that he had actual notice, because their own witnesses, one and all, prove the reverse. I of course do not refer here to the testimony of E. P. Sampson, because his testimony proves nothing on that point, nor indeed upon any other point connected with this case. That testimony was taken in a former suit brought by these plaintiffs against Mr. Tallman in his lifetime to sustain, as they supposed, certain allegations made by them in that case, but which are not made in the present suit.

Then, if there was no actual notice was there such constructive notice as would take from Mr. Tallman the character of an innocent purchaser for value? For the purpose of producing this result, I suppose, for it can serve no other purpose, plaintiffs, in their bill of complaint filed in this case, allege that "on the 20th day of January, 1876, and after the "said land had been attached at the suit of plaintiffs against

" *recorded in the land records, and the recording paid for by the* " *officers,*" &c.

General Stat. of Mo., 1865, page 564, section 23.
Rev. Stat. 1879, Vol. 1, page 66, section 420, subdivision 3.

4th. Neither would the suit in equity, brought by plaintiffs against A. N. Lancaster, Edward L. Wells, and George C. Tallman on the 15th day of January, 1876, for the purpose of having the deed from Lancaster to Wells declared a mortgage, have imparted constructive notice of any equities subsisting between Lancaster and Wells, even if the bringing of that suit had been anterior to the sale by Wells to Tallman, because no notice of the bringing and the pendency of that suit was recorded in the offices for the recording of deeds in the counties in which the lands in controversy were situated, as required by the statute of Missouri on that subject. By that statute it is provided that " in any " civil action, based on any equitable rights, claim, or *lien*, " affecting or designed to affect real estate, the plaintiff shall " file of record, with the recorder of deeds of the county in " which any such real estate is situated, a written notice of " the pending of the suit, stating the names of the parties, " the style of the action and the term of the court to which " such suit is brought, a description of the real estate liable " to be affected thereby; *and the pendency of such suit shall be* " *constructive notice to purchasers or incumbrances only from the* " *time of filing such notice. The recorder shall note the time of* " *receiving such notice, and shall record and index the same in* " *like manner as deeds of real estate are required to be recorded* " *and indexed.*"

General Statutes, 1865, p. 670, section 1.
Rev. Stat., 1879, Vol. 1, p. 542, section 3217.

It is true that whatever is sufficient to put a purchaser on inquiry, where inquiry becomes a duty, and would lead him

to a discovery of the alleged fact, is notice; or, as the same rule is sometimes stated, a purchaser is bound to take notice of every defect that lies in the channel of his title; but in this case there was nothing to put Mr. Tallman upon inquiry—no defect lying in the channel of his title of which he could take notice. There was an absolute deed on record from Lancaster to Wells, and that deed containing, not only the statutory covenants of seizen, against incumbrances and for further assurance, but a specific covenant of general warranty as well. There is certainly nothing here to excite suspicion; nothing to put a purchaser on inquiry. There was not even the slightest appearance of an irregularity in the recorded title, much less a real defect. The covenants contained in the deed from Lancaster to Wells were covenants running with the land, of which the purchaser from Wells could avail himself in case he were evicted upon a paramount title.

It is conclusively proved, if any question can be concluded by human testimony, that Mr. Tallman, at the time of his purchase from Mr. Wells, had no actual notice of the secret agreement between Mr. Lancaster and Mr. Wells, which it is contended constituted the deeds from Lancaster to Wells a mortgage; and we have already seen that neither the suit by attachment nor the suit brought at the same time to have the deed from Lancaster to Wells decreed a mortgage, nor both of those suits combined, were sufficient to affect Mr. Tallman with constructive notice of that agreement (see testimony printed record, pp. 39, 47, 48, 51, 57, 70); but—

5th. It is contended that the fact that the deeds from Mr. Wells to Mr. Tallman were only deeds of quit-claim is sufficient to affect the latter with constructive notice of that secret agreement so as to take from him the character of an innocent purchaser; and it is said that this is the settled doctrine in Missouri. Thus we are told that a party who takes by quit-claim takes the title subject to all the infirmities

which attach to it in the hands of his vendor; that such deed constitutes notice in itself of all infirmities, or rather that it constitutes what is termed a conclusive presumption that the vendee had notice, and that no evidence will be admitted to show that he had no notice in fact; and as authority for this proposition we are referred to the cases of *Ridgeway* vs. *Holliday*, 59 Mo., 444; *Mann* vs. *Best*, 62 Mo., 491, and *May* vs. *LeClaire*, 11 Wallace, 232.

The case of *Ridgeway* vs. *Holliday*, 59 Mo., 444, does not rule this case. That case was decided under the statute of limitation, and it was correctly decided whether all the reasoning of the judge who delivered the opinion of the court was correct or not. Bennett, the person under whom Ridgeway claimed, had, in October or November, 1859, purchased the land in controversy from the agent of Voteau, under a power of attorney defectively acknowledged, by reason of which defective acknowledgment no deed was executed, although Bennett paid the whole amount of the purchase-money, went into possession, remained in possession about a year, when he sold the land to Ridgeway and put him in possession, although he made no conveyance to Ridgeway. He and his tenants remained in possession for more than the statutory period, holding adversely. In March, 1870, Voteau, who resided in California, brought an ejectment against the tenant of Ridgeway, who made default, and Ridgeway, who then resided in the State of Illinois, had no notice of and was not made a party to that ejectment. The tenant having made default judgment by default was rendered in favor of Voteau for the recovery of possession on the 20th of April, 1870, and on the 23d day of July, 1870, possession of the premises was delivered to Voteau by the United States marshal on a writ of *habere facias possessionum*, who remained in possession until the 19th September, 1870, when he executed and delivered a quit-claim deed to Holliday, who was in possession by his tenant, Gentry, in November, 1871, when Ridgeway brought his ejectment to recover possession.

The statute of limitations has a more extended effect in Missouri than in some other States. In some of the States, as in Pennsylvania, the defence of the statute of limitations does not rest upon any merit in the disseizor who enters against all right, but upon the demerit of the owner of the legal title who supinely permits the disseizor to enter and hold adversely for the statutory period.

The statute does not, therefore, transfer the legal title from the original owner of it to the adverse occupant, but only interposes a bar to a recovery on that title.

But in Missouri adverse possession for the statutory period has the effect of actually transferring the legal title of the former owner to the adverse occupant, who thereby acquires as meritorious a title as any other. And if the possession of the occupant be adverse to all the world he acquires an absolute title against all the world. Therefore the possession of Ridgeway and those under whom he claimed being adverse, the legal title of Voteau was, by that possession, divested and became absolutely vested in Ridgeway; after which no form of conveyance by Voteau would pass any title. It was, therefore, immaterial whether the deed from Voteau to Holliday was a quit-claim or warranty deed, because either would pass the title if Voteau had the legal title, and neither would pass it if he had no title. Hence I say the case was well decided, although some of the reasoning of the judge may have been without foundation.

The case of *Mann* vs. *Best*, 62 Mo., 491, does seem to state the rule with regard to the effect of a quit-claim deed as broadly as it is contended for on the other side; and as authority for that decision the supreme court of Missouri relied on the cases of *Bogy* vs. *Shwab*, 13 Mo., 330; *Brown* vs. *Jackson*, 3 Wheaton, 449; *Oliver* vs. *Pyatt*, 3 Howard, 333; and *May* vs. *LeClaire*, 11 Wallace, 232. But it will be found on examination that neither one of these cases supports the decision in Mann and Best.

The case of *Bogy* vs. *Shwab*, 13 Mo., 320, only decides that

when one without title conveyed by deed of quit-claim, and afterwards acquired the title, such after-acquired title would not inure to his vendee by quit-claim. But this is on the principle that there being no covenant of warranty, the vendor by quit-claim was not estopped from asserting the after-acquired title against his vendee. In the case of *Brown* vs. *Jackson*, 3 Wheaton, 449, the quit-claim deed did not describe the land in controversy at all. It was wholly indescriptive, while the prior deed was descriptive of the land in controversy; and, although not recorded until after the subsequent quit-claim deed, it was good as between the parties to it without being recorded; and, being good as between the parties, it was good as against a subsequently recorded deed from the same grantor which did not describe the land in controversy; and this whether a quit-claim or a deed with covenant of warranty. On the other hand, it is manifest, from the opinion of this court, delivered by Mr. Justice Todd, that if the subsequent deed, having been first recorded, had been descriptive of the land, the vendee by that deed would have held the land, whether a quit-claim or a warranty deed. The case of *Oliver* vs. *Pyatt*, 3 Howard, 333, only speaks of the agreement containing a stipulation for a quit-claim deed as being a significant circumstance in the case; but it will be remembered that in that case the attempt was made on the part of a trustee to convey the land in fraud of the rights of the *cestui que trust*, of which fraud the vendee had actual notice.

I freely concede that accepting a deed of quit-claim is a circumstance which may, with other circumstances, be sufficient to effect a purchaser with notice of a defect in the title purchased; but I deny that such a deed constitutes notice in itself of all infirmities, or that it constitutes a conclusive presumption that the purchaser had notice.

The case of *May* vs. *LeClair*, 11 Wallace, 232, was one that was bristling all over with fraud—not constructive, but actual fraud. Indeed it would be difficult for the mind to imagine

a case in which it could be more truly said that it "was conceived in sin and brought forth in equity" than the case of *May* vs. *LeClair*. No one can read the case through without fully realizing the fact that LeClair, Powers, Desaint, and Cook were all concerned in concocting and carrying out the series of frauds (for it was not a single fraud, but a series of frauds) that were to strip Captain May of everything he possessed.

And in the case of *Mann* vs. *Best* the fact must not be overlooked that the title of Cunningham, and which he conveyed to Best, was fraudulently acquired, although it is true that Best does not seem to have had actual notice of the fraud.

But even the case of Mann and Best, although not supported by the cases on which it was supposed to rest, has been very much modified by later decisions of the supreme court of the State of Missouri.

In *Fox* vs. *Hall*, 74 Mo., 315, that court decided that, as against an unrecorded deed, a subsequent quit-claim deed from the same grantor will pass the title, provided the grantee takes for value and without notice of the former deed.

The same thing is decided in the case of *Boogher* vs. *Neece*, 75 Mo., 383.

But it may be said that these cases arose under and were decided with exclusive reference to the recording acts of Missouri. They serve to show, however, that the party who takes by quit-claim does not take the title subject to all infirmities which attach to it in the hands of his vendor, or that such a deed does not in itself constitute notice of all infirmities, and that it does not constitute a conclusive presumption that the vendee had notice, so as to preclude the introduction of all evidence to show that he had no notice in fact. These cases serve to prove that a purchaser for value by deed of quit-claim, may be an innocent purchaser.

And what stronger case can there be of an innocent purchaser than the case at bar.

An estate in fee will pass as well without covenant or war-

ranty as with it. Thus an agreement to convey lands in fee was held to be satisfied by a quit-claim deed. (*Ketchum* vs. *Everston*, 13 Johns., 359; 2 Hill on Vendors, Ed. of 1858, p. 45, chap. 28.) So it is a settled rule that an estate in fee-simple may be created by the usual and solemn forms of conveyance without warranty, express or implied, and a conveyance in fee does not, *ipso facto*, imply a warranty. *Frost* et al. vs. *Raymond*, 2 Caine's Rep., 191.

A quit-claim deed, as used in this country, is substantially the derivative conveyance known to the common laws as a deed of release, the operative words in both being "remised, released, and forever quit-claimed." And it inures by way of entry and feoffment more nearly than by way of any other species of release.

See 1 Black. Com., Philadelphia, Ed. of 1857, marg. p. 325, chap. 20.

Our quit-claim deeds, as well as a release at common law, will pass a fee, the difference between them being that in case of a quit-claim it is not necessary that there should be an actual disseizen to render it operative. But even in a release at common law the desseizen was only fictitious in most instances, and we have only abolished the legal fiction, as we have done in many other instances. Although the conveyance by feoffment with livery of seizin has been in this country a lawful mode of conveyance, it has not been used in practice. Our conveyances have been either under the statute of uses or short deeds of conveyance, *in the nature of the ancient* feoffment, and made effectual, on being duly recorded, without the ceremony of livery.

4 Kent's Com., 10 Ed., lecture 67, p. 596, marginal p. 490.

But whether our quit-claim deeds inure by way of entry and feoffment or by way of bargain and sale makes, perhaps, but little difference, because either species of conveyance is sufficient to pass a fee-simple without covenant of warranty.

The conclusion of the whole matter, then, is this: A quit-claim deed will pass a good title in fee where the estate purported to be conveyed is a fee. A deed containing all the covenants of warranty will not pass a good title in fee if the grantor be not seized of an estate in fee, the difference between them being this: that in case of a deed containing the covenants of warranty, if the grantor have no title at the time of conveyance, yet if he afterward acquire a title, such after-acquired title will inure to the benefit of his grantee; while, under our statute, as it has been construed, a subsequently-acquired title would not inure to the benefit of a grantee under a deed of quit-claim.

The presumption that Mr. Tallman had notice of the secret arrangement between Lancaster and Wells at the time of his purchase was, then, not a presumption of law but of fact, and being a presumption of fact it was open to rebuttal by evidence of the absence of notice, and that evidence has been furnished by the plaintiffs and appellants in this case as well as by the defendants and appellees.

And this brings us to consider—

IV.

Whether, under all the facts and circumstances of the case, Lancaster is not estopped from setting up the secret parol agreement made between himself and Wells, in opposition to his own absolute deeds, as against a purchaser from Wells, who had no knowledge of the existence of such agreement; and who, in ignorance of that agreement, paid a fair price for the land: and whether, if Lancaster is estopped from setting up such secret agreement, his creditors, in the absence of all fraud, are not equally estopped. And—

First. That Lancaster is estopped from setting up the alleged parol agreement between himself and Wells, as against Mr. Tallman, is, I think, abundantly proved by numerous authorities.

Thus Lord Denman holds that when one by his words or conduct wilfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.

Pickard vs. *Sears*, 6 Adol. and Ellis, 469.
33 Eng. Com. Law Rep., 115.

The rule here laid down is said to be fully established by Parke, Baron, in the case of *Freeman* vs. *Cook*, 2 Exch. Rep., 654.

These cases were cited with approval by Mr. Justice Wagner in delivering the opinion of the supreme court of Missouri in the case of *Campbell* vs. *Johnson*, 44 Mo., p. 251.

So in the case of *Markham* vs. *O'Conner*, 52 Ga. Rep., 183, where land on which there was a mortgage duly recorded was sold at auction, in the presence of the mortgagee, the auctioneer announced that the land was unincumbered, and the mortgagee failed to correct the announcement, and the purchaser bought it under the impression that he was getting a clear title, *it was held* that the mortgagee was estopped from afterwards setting up his mortgage against the purchaser.

So where M made a deed purporting to convey land to which he had no title to defendant, with covenant of warranty against all persons claiming under him, and afterwards M acquired title to the land and mortgaged it to H, under whom plaintiff claimed, in ejectment, *it was held* that plaintiff was estopped from saying that M was not seized at the time of the first conveyance, and could not, therefore, recover.

Doe on the Dem. of Potts vs. *Dowdall*, 3 Houston (Delaware) Rep., 369–378.

And again: A deed from an executor purporting to con-

vey the right of his testator at his death in certain land of which he died disseized, by virtue of a power given in the will, estops such executor from claiming any interest in the land as heir to the deceased, although there are no express covenants in the deed.

Poor vs. *Robinson*, 10 Mass. Rep., 131.

Now, what was the language and conduct of Lancaster as to the title to the lands in controversy? Did he not say to Tallman, by the execution, acknowledgment, and delivery of the deeds to Wells, absolute on their face, containing covenants of general warranty, and allowing those deeds to go on record, that Wells took thereby an absolute estate in fee-simple in the lands—in other words, that the absolute title was in Wells? The acts of Lancaster were stronger than any mere verbal declarations he might have made, and *a fortiori* stronger than any inference or conclusion to be drawn from mere silence. Here we have not only Lancaster's declaration that an absolute title to the lands in controversy is vested in Wells, but that declaration is made in writing, under the solemnity of a seal, and made a matter of record, so as to advertise to the world that the title has passed out of him and has become vested in Wells.

But this is not all. By appellants' own testimony it is shown that after the conveyance by Lancaster to Wells, and after the making of the alleged parol agreement which, it is contended, constituted that conveyance a mortgage, and during the time the negotiations were going on for the purchase by Mr. Tallman, Lancaster, according to plaintiffs' own showing, saw him fifty times, and encouraged Tallman to make the purchase by telling him that the title was indisputable, while he never gave Tallman any intimation that the interest of Wells was only that of a mortgagee.

Is there not enough, and more than enough, here to cause Mr. Tallman, or any one else, to believe that the absolute title was in Wells and to induce him to act on that belief?

If so, then this case falls within the ruling of Lord Denman in *Pickard* vs. *Sears*, 6 Adol. and Ellis, 475.

Did not Lancaster so conduct himself that a reasonable man would take his representation that Wells was vested with the absolute title to be true, and to believe that it was meant that he should act upon it? If he did, then this case falls within the ruling in *Freeman* vs. *Cook*, 2 Exch. Rep., 654.

Did not Lancaster do more than to stand by and give a tacit assent to the representation of a third person at the time of the sale that an absolute title to the land in controversy was vested in Wells? If he did, then this case falls within the ruling in the case of *Markham* vs. *O'Conner*, 52 Ga., 183.

It is true this last case was decided under the code of Georgia, but it will be seen, from the sections of the code cited in the opinion, that they are but the embodiment of the general doctrine of the common law on the same subject.

But it is said that the parol agreement between Lancaster and Wells changed the conveyances from Lancaster to Wells into a mortgage. This may have been so as between Lancaster and Wells, but under the authority of the cases here cited Lancaster is estopped from asserting that those conveyances were anything other than they seemed as against Tallman, who had no knowledge of the existence of the secret agreement between Lancaster and Wells.

But here, again, we are told that the fact of the deeds from Wells to Tallman being deeds of quit-claim was sufficient to affect Tallman with notice of this secret agreement. To this I answer that, in the case of *Doe on the Demise of Potts* vs. *Dowdall*, Houston, 369, the conveyance which created the estoppal was a deed of quit-claim, not of the land, but of all the estate, right, title, interest, property, claim, and demand of, in, to, or out of the land; the difference between that case and this being that in that case there was a covenant of special warranty contained in the deed, while in this case

there were no covenants of warranty in the deeds from Wells to Tallman, but the deeds from Lancaster to Wells, which are the deeds which create the estoppel in this case, contain all the covenants of warranty.

Besides, it must be borne in mind that although the note given by Lancaster to Wells was not gixen up at the time the conveyances were made, yet it was given up shortly before the time Wells conveyed to Tallman, and a considerable time before the commencement of any suit against either Lancaster or Tallman, and it was accepted by Lancaster as an extinguishment of his indebtedness to Wells.

This being so Lancaster could not have enforced the parol agreement afterwards, even as against Wells, much less against Tallman, who purchased from Wells without any knowledge of the secret parol agreement between Lancaster and Wells.

2d. If Lancaster is estopped from setting up the secret parol agreement between himself and Wells as against a purchaser from Wells, his creditors are also estopped. I concede that this would not be so if the transaction between Lancaster and Wells had been fraudulent as to the creditors of Lancaster, and if Tallman had been either a party or privy to the fraud. Fraud is so odious in the eye of the law that it taints and corrupts everything it touches; but in this case there is a total absence even of a suspicion of fraud. There is not only no evidence of fraud, but the plaintiffs and appellants do not allege its existence in their bill of complaint, and their own evidence proves its absence.

This being so the creditors of Lancaster have no greater rights or equities than Lancaster had. Their equities are to be wrought out only through the equities of Lancaster, so that if Lancaster, by his acts and declarations, estopped himself from asserting an equity of redemption in the lands in controversy his creditors are equally estopped.

I contend, then—

First. That under all the circumstances and evidence in this case the conveyances from Lancaster to Wells did not constitute a mortgagee, but a conditional sale.

Second. That even if those conveyances, taken in connection with the cotemporaneous parol agreement, are to be considered a mortgage, still it was a mortgage with a power in the mortgagee to sell, and the sale made by Wells to Tallman was made in execution of that power.

Third. That even if the conveyance from Lancaster to Wells, taken in connection with the parol agreement, was a mortgage, and a mortgage without a power in the mortgagee to sell, still Tallman had no such notice of the character of the transaction between Lancaster and Wells as would take from him the character of an innocent purchaser for value.

Fourth. That regarding the transaction between Lancaster and Wells as a mortgage without a power of sale, still, under all the facts and circumstances appearing in the case, Lancaster is estopped from setting up a parol agreement between himself and Wells or from asserting any equity of redemption as against Tallman, and there being no fraud in any of the transactions as against the creditors of Lancaster, those creditors are also estopped from asserting such equity of redemption, so that in any view of the case the decree of the circuit court is right and ought to be affirmed.

B. F. Lucas,

Attorney for Appellees.